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## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1923.

No. 577

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ST. LOUIS AND SAN FRANCISCO RAILROAD COM-  
PANY AND ST. LOUIS-SAN FRANCISCO RAIL-  
WAY COMPANY, PETITIONERS,

vs.

E. B. SPILLER ET AL.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

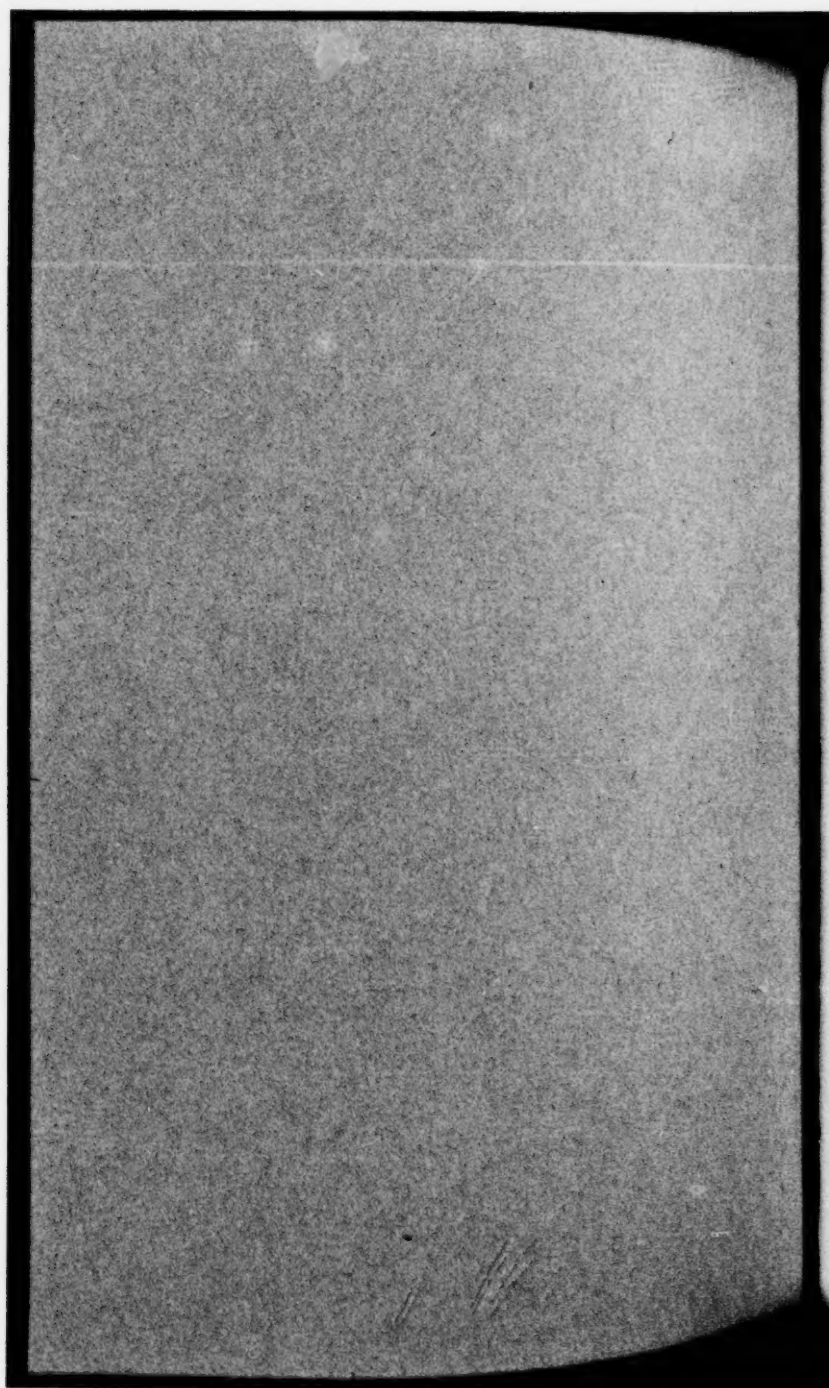
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PETITION FOR CERTIORARI FILED AUGUST 21, 1924

CERTIORARI GRANTED NOVEMBER 1, 1924

(33,144)



(32,144)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

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INDEX

	Original	Print
Proceedings in United States circuit court of appeals, eighth circuit.....	<i>a</i>	1
Caption.....(omitted in printing) ..	<i>a</i>	
Record from district court of the United States, eastern Missouri .....	1	1
Citation and service.....(omitted in printing) ..	1	
Caption.....(omitted in printing) ..	2	
Bill of complaint.....	2	1
Memorandum re Exhibit "A".....	10	10
Order appointing receivers.....	11	11
Order granting leave to file intervening petition of E. B. Spiller .....	13	13
Memorandum opinion on application granting leave to file intervening petition, etc., Sanborn, J.....	13	13
Intervening petition of E. B. Spiller.....	14	14

	Original	Print
Exhibit A—Claims against St. Louis & San Francisco Railroad Company.....	29	31
Exhibit B—Judgment in the case of E. B. Spiller vs. Missouri, Kansas & Texas Railway Company et al. in the United States district court, western district of Missouri.....	48	50
Exhibit C—Mandate of United States circuit court of appeals in the case of St. Louis & San Francisco Railroad Company vs. E. B. Spiller.....	49	52
Exhibit D—Mandate of Supreme Court United States in the case of E. B. Spiller vs. St. Louis & San Francisco Railroad Company.....	51	54
Exhibit E—Order sustaining motion of plaintiff to tax attorney's fees in the case of E. B. Spiller vs. Missouri, Kansas & Texas Railway Company et al. in the United States district court, western district of Missouri.....	53	56
Order granting leave to file intervening petition of E. B. Spiller et al.....	57	60
Memorandum opinion on application granting leave to file intervening petition, Sanborn, J.....	57	61
Intervening petition of E. B. Spiller et al.....	58	62
Exhibit A—Memorandum as to.....	79	87
Exhibit B—Judgment in the case of E. B. Spiller et al. vs. Missouri, Kansas & Texas Railway Company et al.....	79	88
Order granting leave to E. B. Spiller to file separate and supplemental intervening petition.....	82	91
Separate and supplemental intervening petition of E. B. Spiller .....	83	91
Order granting leave to file supplemental intervening petition of E. B. Spiller et al.....	86	93
Supplemental intervening petition of E. B. Spiller et al.....	86	94
Answer to intervening petition of E. B. Spiller.....	89	97
Answer to intervening petition and supplemental intervening petition of E. B. Spiller.....	97	105
Answer to intervening petition of E. B. Spiller et al....	106	116
Answer to intervening petition and supplemental intervening petition of E. B. Spiller et al.....	114	124
Report of special master.....	123	134
Synopsis on pleadings of E. B. Spiller intervention.....	126	136
Synopsis on pleadings of E. B. Spiller et al. intervention .....	139	151
Findings of fact.....	140	152
Conclusions of law.....	152	166
Motion for consolidation of petitions for intervention...	179	195
Order consolidating petitions of intervention.....	179	196
Exceptions of St. Louis & San Francisco Railroad Company to report of special master.....	180	197

# INDEX

iii

Original Print

Exceptions of St. Louis San Francisco Railway Com- pany to report of special master, memorandum as to...	198	216
Opinion on exceptions to report of special master.....	199	216
Order dismissing petitions of intervention.....	222	242
Decree .....	223	242
Petition for appeal.....	223	243
Assignments of error.....	224	243
Order allowing appeal.....	234	256
Statement re bond on appeal.....	234	256
Election as to printing.....	234	256
Præcipe for transcript of record.....	235	257
Statement re orders extending time.....	237	258
Summary of evidence.....	237	259
Caption .....	237	259
Stipulation to try all intervening petitions together..	238	259
Colloquy between master and counsel.....	238	260
Evidence for interveners.....	243	265
Exhibit 1—Opinion of Interstate Commerce Commission in the case of Cattle Raisers' As- sociation of Texas vs. Missouri, Kansas & Texas Railway Company et al., memorandum as to.....	243	265
Exhibit 2—Petition of Cattle Raisers' Associa- tion to reopen case, stipulation as to.....	244	267
Exhibit 3—Opinion of Interstate Commerce Commission in the case of Cattle Raisers' As- sociation of Texas vs. Missouri, Kansas & Texas Railway Company et al. on petition to reopen case.....	245	268
Exhibit 4—Report of Interstate Commerce Com- mission in the case of Cattle Raisers' Associa- tion of Texas vs. Missouri, Kansas & Texas Railway Company et al.....	251	274
Exhibit 5—Supplemental report of Interstate Commerce Commission in the case of Cattle Raisers' Association of Texas vs. Missouri, Kansas & Texas Railway Company et al.....	269	294
Order of Interstate Commerce Commission, January 12, 1914.....	272	298
Exhibit 6—Petition in the case of E. B. Spiller vs. Missouri, Kansas & Texas Railway Com- pany et al. in the United States district court, western district of Missouri.....	278	304
Exhibit 7—Petition in the case of E. B. Spiller et al. vs. Missouri, Kansas & Texas Railway Company et al. in the United States district court, western district of Missouri, memo- randum as to.....	288	314
Exhibit 8—Memorandum as to.....	288	315

## INDEX

	Original	Print
Exhibit 9—Memorandum as to.....	288	315
Motion of defendant St. Louis & San Francisco Railroad Company to quash summons and dismiss in the case of E. B. Spiller vs. Missouri, Kansas & Texas Railway Company et al. in the United States district court, western district of Missouri.....	290	317
Exhibit 10—Memorandum as to.....	291	318
Exhibit 11—Memorandum as to.....	292	319
Exhibit 12—Motion of plaintiff for additional attorneys' fees in the case of E. B. Spiller et al. vs. St. Louis & San Francisco Railroad Company in the United States district court, western district of Missouri.....	293	320
Exhibit 13—Memorandum as to.....	294	322
Exhibit 14—Notice to defendant of filing of petition of E. B. Spiller for leave to intervene in the United States district court, eastern district of Missouri.....	295	322
Exhibit 15—Order granting leave for appointment of receiver in the case of North American Company vs. St. Louis-San Francisco Railroad Company in the United States district court, eastern district of Missouri.....	297	325
Stipulation of facts.....	301	329
Testimony of E. T. Miller.....	306	334
Exhibit 16—Plea in abatement in the case of E. B. Spiller vs. Missouri, Kansas & Texas Railway Company et al. in United States district court, northern district of Texas.....	308	336
Exhibit 17—Plan and agreement for reorganization of St. Louis & San Francisco Railroad Company.....	312	341
Comparative tables showing capitalization, etc. ....	358	389
Petition of J. & W. Seligman & Company for authorization of reorganization of St. Louis & San Francisco Railroad Company, dated November 12, 1915.....	396	433
Petition of J. & W. Seligman & Company for authorization of reorganization of St. Louis & San Francisco Railroad Company, May 15, 1916.....	427	467
Exhibit 17-B—Opinion of Public Service Commission of Missouri on application for authorization of reorganization agreement.....	441	482
Order of Public Service Commission of Missouri, June 5, 1916.....	500	548
Testimony of S. H. Cowan.....	505	554
Testimony of E. B. Spiller.....	509	558

# INDEX

	Original	V Print
Reports of special master on bimonthly reports Nos. 1 to 6 of receivers.....	511	559
Final report of receivers.....	545	579
Exhibit "A"—Receipt of St. Louis-San Francisco Railway Co. for balance of funds in hands of receivers.....	547	580
Exhibit 18—Order discharging receivers in case of North American Company vs. St. Louis & San Francisco Railroad Company, district court United States, eastern Missouri.....	549	581
Exhibit 18-A—Statement showing result of operations of St. Louis-San Francisco Railway Company from 1906 to 1913.....	554	586
Exhibit 19—Notice to reorganization committee, etc. ....	555	587
Statement re Exhibits "A" and "B".....	557	589
Exhibit 20—Final decree in consolidated cause No. 4174, district court United States, eastern Missouri.....	558	590
Evidence for defendant.....	601	639
Exhibit 1—Interlocutory decree in consolidated cause No. 4174, district court United States, eastern Missouri.....	601	639
Stipulation to omit certain orders offered in evidence and statement thereto.....	605	643
Exhibit 6—Petition in case of E. B. Spiller vs. St. Louis & San Francisco Railroad Company, district court United States, eastern Missouri .....	609	647
Exhibit 6 A—Answer in case of E. B. Spiller vs. St. Louis & San Francisco Railroad Company, district court, United States, eastern Missouri .....	617	657
Exhibit 6 B—Reply in case of E. B. Spiller vs. St. Louis & San Francisco Railroad Company, district court United States, eastern Missouri .....	623	663
Memorandum re Exhibit 7.....	624	664
Exhibit 8—Report of special master on first report of receivers.....	624	665
Report of receivers.....	625	666
Exhibit 9—Statements relative to mortgage bonds, etc., of Kansas City, Fort Scott & Memphis Railway Company and St. Louis & San Francisco Railroad Company.....	631	673
Exhibit 10—Analysis of items shown in report of receivers.....	635	675
Evidence for interveners.....	636	676
Exhibit 21—Memorandum as to.....	636	676

	Original	Print
Exhibit 22—Order confirming sale in consolidated case No. 4174 in the United States district court, eastern district of Missouri.....	636	676
Exhibit A—Form of deed.....	644	684
Exhibit B—Form of deed.....	658	700
Testimony of W. F. Evans.....	669	712
Exhibit 23—Memorandum as to.....	670	713
Exhibit 24—Letter, A. Douglas to receivers, August 13, 1913.....	671	714
Inventory of property of St. Louis & San Francisco Railroad Company.....	672	714
Order approving summary of evidence.....	691	737
Order extending time.....	691	737
Stipulation re transcript of record.....	692	738
Clerk's certificate.....(omitted in printing)..	693	
Proceedings in United States circuit court of appeals, eighth circuit .....	694	739
Stipulation re transcript of record.....	694	739
Appearances of counsel.....(omitted in printing)..	698	
Argument and submission.....(omitted in printing)..	699	
Opinion, Kenyon, J.....	700	743
Decree .....	726	769
Clerk's certificate.....(omitted in printing)..	728	
Order allowing certiorari.....	729	770

[fol. a]

[Caption omitted]

[fol. 1] Citation, in usual form, showing service on E. T. Miller et al., filed February 17, 1923, omitted in printing.

[fol. 2]

[Caption omitted]

**IN UNITED STATES DISTRICT COURT FOR THE  
EASTERN DIVISION OF THE EASTERN DISTRICT  
OF MISSOURI**

BILL OF COMPLAINT—Filed May 27, 1913

NORTH AMERICAN COMPANY, Plaintiff,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

The North American Company brings this bill of complaint against the St. Louis & San Francisco Railroad Company, hereinafter called Railroad, and avers:

**First**

That complainant is a corporation duly and legally organized under, by virtue of and pursuant to the laws of the State of New Jersey, and is a citizen and resident of said State of New Jersey, within the meaning of the laws defining the jurisdiction of this court.

**Second**

That the St. Louis & San Francisco Railroad Company is a consolidated railroad corporation, organized and existing under, by virtue of and pursuant to the laws of the States of Missouri and Kansas; and that a substantial part of the railroads operated and owned by it, to-wit, 1,717 miles are located in the State of Missouri, and its chief operating and general offices are located at the City of St. Louis, in said

State, and within the judicial district of this court, and said Railroad Company is a citizen and resident of the State of Missouri, within the meaning of the laws fixing and defining the jurisdiction of this court.

[fol. 3]

### Third

That defendant Railroad Company owns and operates an aggregate of over 5,254 miles of railroad in the States of Alabama, Arkansas, Kansas, Missouri, Mississippi, Oklahoma and Tennessee, all continuous and connecting, and forming a complete railroad system, and contain rolling stock equipment and other property, both real and personal rights, privileges and franchises appertaining to or used in connection with its line of railroad and business, and is also the owner of certain bonds and stocks of various other corporations.

### Fourth

Your orator further alleges, on information and belief, that the lines of railroad and equipment owned and operated by the defendant, are subject to certain mortgages and other liens, which mortgages and liens secure indebtedness as stated in Exhibit "A," hereto attached and made a part hereof, and to which reference is hereby made.

Your orator further avers, upon information and belief, that defendant on or about October 1, 1902, made a certain agreement with the Colonial Trust Company of New York, as Trustee, (which Trust Company has been succeeded by consolidation, merger or otherwise, by the Equitable Trust Company of New York), whereby it agreed on the 1st day of July, 1912, to purchase and pay any shareholder who should deposit with said Trust Company either the preferred or common stock of the Chicago & Eastern Illinois Railroad Company the following prices per share, to-wit: For Preferred \$150.00, Common \$250.00, and in the meantime to pay as dividends upon respective classes of stock, as follows: upon the preferred \$1.50 per share for each quarter beginning January 1, 1903, and \$5.00 semi-annually upon each share of the common beginning January 1, 1903. That under said agreement 180,445 shares of the common stock and 125,835 shares of the preferred stock of

the Chicago & Eastern Illinois Railroad Company were deposited with the said Trust Company, and that from thence until now the defendant has paid respectively the quarterly and semi-annual dividends as aforesaid upon said shares of stock; that there will be due under the said obligation on the first day of July, on account of the common shares so deposited, the sum of approximately between six and seven hundred thousand dollars.

Your orator, upon information and belief, charges that the defendant receives no income from the stock so deposited with which to pay the quarterly and semi-annual [fol. 4] dividends as provided by said contract.

Your orator further avers that the principal business of the said Chicago & Eastern Illinois Railroad Company (a consolidated railroad corporation, organized under the laws of the States of Illinois and Indiana, owning and operating a system of railroads therein) is the transportation of coal from mines situated along or in close proximity to its railroad and the products of such mines constitute more than one-half of the total tonnage of trade transported by said railroad. That in April, 1912, by the concerted action of the miners employed in said mines all of said mines wholly suspended operation, and such suspension lasted more than sixty days, and thereafter the operation of said mines was slowly recommenced, whereby the coal traffic usually carried by the defendant was almost wholly suspended during the months of April and May, 1912, and was very largely reduced during the three next succeeding months, and that during the suspension of the operation of the coal mines, as aforesaid, along the lines of the said railroad, as aforesaid, the coal cars of the said railroad became widely scattered among other railroads, so that when the normal shipments of coal from the said mines were available, the said railroad company was unable to furnish coal cars for the transportation thereof; that during the months of March and April of 1903, disastrous floods occurred along the lines of the said railroad, whereby the continuity of its main lines were destroyed and the movement of through trains was wholly interfered with and suspended for nearly one month. That by reason of the aforesaid conditions, the defendant has been unable to obtain any dividends upon the stock so deposited with the said Trust Company,

and the obligation thereunder has imposed a loss annually, for the past two years, of more than one million dollars.

Your orator is informed and believes that the defendant having issued its bonds to the amount of about \$29,000,000.00, secured by a mortgage upon the line of railway of the New Orleans, Texas & Mexico Railway Company, which, with its owned and operated and connected lines extends from New Orleans, Louisiana, to Brownsville, Texas, because of its ownership of the stock of said New Orleans, Texas & Mexico Railway Company, and its obligations on the bonds thereof, has been compelled to pay annually a sum ranging between one and one and a half million dollars. That this great loss has been sustained by the destruction of the physical structures of said railroad, by extraordinary [fol. 5] floods and the interruption of traffic with its connecting lines in the Republic of Mexico by the rebellion therein.

#### Fifth

Your orator is informed and believes that the failure to meet the interest for dividends on the foregoing indebtedness, or any part thereof, when said interest matures, shall operate as a default under the mortgages or other instruments securing such indebtedness and render such mortgages and other instruments enforceable, and will permit the trustees of the respective mortgages or other instruments securing said indebtedness to bring suitable actions and proceedings to enforce the liens created by said mortgages or other instruments securing such indebtedness by the institution of actions for the foreclosure of said liens, or the enforcement of the other proper remedies granted by said mortgages or other instruments, in case of default in the performance by the defendant railroad company, of its covenants contained therein.

Your orator is informed and believes, and hence so avers that the annual interest charge payable in respect of the indebtedness hereinbefore mentioned exceeds the net revenues derived by the defendant from the operation of its properties.

Your orator further alleges, upon information and belief, that in the assets of the defendant, as stated in its published balance sheets are various securities, which are included

therein at their par value, but that by reason of the financial and legal situation of the companies issuing the same and the present great financial stringency, are of far less value than the par thereof.

Your orator avers, upon information and belief, that it is unable to meet its obligations as they mature, and has not now the means at hand with which to pay its floating liabilities for materials and supplies furnished, which amount upward of \$2,000,000.00.

#### Sixth

Your orator alleges that the defendant is indebted to it in the sum of Four Hundred Thousand Dollars, (\$400,000.00) evidenced by a promissory note of the said defendant for money loaned by your orator to the defendant in order to enable it to discharge its obligations under the various franchises and privileges granted to it in connection with the operation of its line of railroad; that the payment of said note has been duly demanded by your orator from the said [fol. 6] defendant, and the payment thereof refused, and the same is now due and unpaid, although said indebtedness is admitted by said defendant to be due, and payable by it to your orator; that said defendant has neglected to pay your orator the said indebtedness and claims to be unable so to do by reason of its financial condition.

#### Seventh

Your orator further alleges upon information and belief that to enable it to comply with the requirements of the Act of Congress and the laws of the various states in which its lines of railroad are situated, as well as with the lawful rules and orders of the Interstate Commerce Commission and the Railroad Commissions of said states with reference to the manner of operation of its lines of railroad and the conduct of its business as a common carrier, it will be necessary that said defendant should expend large sums of money, and the revenue and resources of the defendant, after the payment and discharge of its fixed obligations will be insufficient to admit of such expenditures, and that upon the failure to observe and comply with certain of said rules

and requirements that defendant will be and become subject to the payment of large fines and penalties enforceable against its property in preference and priority to the claims and demands of its general unsecured creditors.

### Eighth

Your orator is informed and believes that defendant has outstanding floating indebtedness for materials and supplies furnished to it in amount upwards of Two Millions of Dollars (\$2,000,000.00); that said indebtedness is now overdue, that the defendant railroad company is unable to pay the same, and that the holders thereof are pressing for payment; that the defendant is without means to effect loans for the purpose of meeting such obligations and without collateral available for such purposes.

Your orator is informed and believes and hence so charges that the defendant has no means at hand with which to meet its immediate and pressing needs in the operation of its railways, that many of the creditors to whom the defendant is liable are urgent in their demands for the immediate payment of their respective claims, and that some of said creditors will bring suit in respect to their said claims and may levy executions on the lines of railroad owned by the defendants and on the materials and supplies and other property of the defendant on hand and kept by the defendant for the necessary use in operating its lines of railroad; and your orator alleges upon information and belief that there is grave danger that the lines of railroad of the defendant may no longer be operated in a single system, [fol. 7] but may be broken up and separately operated; and that it is essential to the interests of the defendant and to the interests of the public and to your orator and its unsecured creditors that the property of the defendant should not be sacrificed or dismembered; that the only means whereby the defendant can pay the floating indebtedness and discharge its current obligations is by the continued maintenance and operation of said system of railroad as a whole, and by an uninterrupted use and enjoyment thereof; that any suits upon or process against its property or its revenues would seriously embarrass and cripple it and diminish, if not destroy, its power successfully to operate said

system, together with all of its appurtenances, and greatly impair its public usefulness; that notwithstanding the fact that every effort has been made to provide funds for the payment of the indebtedness of defendant, or for the extension of time of payment thereof, such efforts have proven unsuccessful, and that unless some definite action is taken on behalf of all the creditors, so that the operation of the defendant system may be kept intact, great and severe loss will be inflicted on all creditors.

#### Ninth

Your orator believes, and hence alleges, that unless this Court, in view of the facts above stated, shall take the railroads and properties of defendant railroad company into judicial custody for the protection of their interests therein, immediately upon default individual creditors will assert their rights and remedies in different courts; that the results will be a multiplicity of suits and a race of diligence; that attempts will be made to secure judgments and priorities; that levies will be made upon the rolling stock, materials and supplies indispensable to the operation of said lines of railroad, which will greatly interfere with and ultimately prevent the defendant from the proper performance of its duties as a common carrier, and will seriously diminish its earnings; and that it will be impossible to operate said lines of railroad as a whole, to the serious inconvenience of the public.

And your orator alleges that an attempt by your orator to enforce at law its claim would precipitate similar action on the part of other creditors, which, in turn, would lead to wasteful strife and controversy such as your orator believes can be avoided, and the property be preserved for equitable distribution amongst those entitled thereto only by the intervention of a court of equity and the granting of equitable relief, including the appointment of a receiver or receivers.

[fol. 8]

#### Tenth

Your orator is further informed and believes, and hence so charges, that in the performance of the public duties of the defendant it is necessary that prompt payment be

made by it of traffic balances, terminal charges and trackage rentals, involving business with other railroads and terminal companies, as the same become due, and that a failure to pay the same will result in the sacrifice of valuable rights of the defendant under leases and trackage contracts and the breaking off of the exchange of business by connecting carriers, resulting in largely decreased revenues.

### Eleventh

That under the foregoing circumstances your orator alleges that the interference of a court of equity for the protection of your orator's rights and the rights of all other parties in interest is immediately required, and especially for the timely appointment of a receiver or receivers to take charge of and preserve the property of the defendant to continue the operation of its lines of railroad for the accommodation of the public, and collect and receive and properly appropriate the income of said property under the orders of the court to be made from time to time until the final decree of the Court in the premises.

### Twelfth

That this is a civil suit in the nature of a claim in equity, and the matter in dispute exceeds, exclusive of interest and costs, the sum of \$5,000.

Inasmuch, therefore, as your orator has no adequate remedy at law for its aforesaid grievances, and can have relief only in equity; your orator files this bill of complaint in behalf of itself and of other creditors of the defendant railroad company, who may come in and contribute to the expense hereof, and prays for equitable relief as follows:

(1) That the rights of your orator and of the other creditors of the defendant Railroad Company, including all holders of its mortgages, bonds and secured obligations, may be ascertained and decreed, and that the Court will fully administer the funds in which your orator is interested, constituting the entire property and assets of the defendant Railroad Company; and will, for such purpose,

marshal all the assets of the defendant Railroad Company and ascertain the several and respective liens and priorities existing upon each and every part of said property and assets, and enforce and decree the rights, liens and equities of the creditors of the defendant Railroad Company, as the same may be finally ascertained and decreed [fol. 9] by the court, in and to each and every portion of the property and assets of the defendant Railroad Company.

(2) That for the purpose of preserving the unity and integrity of the railroads and property of the defendant Railroad Company and of preventing the disruption thereof by separate executions, attachments or sequestrations, or by the enforcements of liens upon separate portions thereof, and for the purpose of continuing the business of the defendant Railroad Company as a going concern and handling properly the earnings derived from the operation of said railroads and property and preventing commerce between the States being interfered with and a multiplicity of suits, a receiver or receivers be appointed by this Honorable Court of all and singular the railroads, rolling-stock, franchises, rights, property and premises of every kind and description and wheresoever located belonging to the defendant Railroad Company, together with the rents, issues, profits, revenues and income thereof, with full power and authority to demand, use, convey, collect and take into possession the goods, chattels, rights, credits, moneys, effects, lands, tenements, books, papers, and property of every kind and description belonging to the defendant Railroad Company and with the usual powers of receivers in such cases, and to operate said railroads and property and collect and receive the income and tolls thereof and apply the same under the order or decree of this Honorable Court, and to appoint such agents and attorneys as may be necessary to the proper management of all of said property and premises; and that the defendant, the Railroad Company, be decreed to make such transfers or conveyances to said receiver or receivers appointed as herein prayed, as may be necessary or proper.

(3) That a writ of injunction may be issued out of and under the seal of this Honorable Court, directing, com-

manding, enjoining and restraining the defendant, the Railroad Company, and all persons, firms and corporations whatsoever and wheresoever located, situated or domiciled, from interfering with, transferring, selling or disposing of, attaching, levying upon, or in any manner whatsoever disturbing any part of the railroads and property now or hereafter in the possession of any receiver or receivers appointed in this cause.

(4) That the defendant be required to answer all and singular the matters above stated.

(5) That a writ of subpoena may be granted to your orator, to be directed to the defendant, thereby requiring the [fol. 10] defendant personally to appear on a certain day before the Court, and then and there full, true, direct and perfect answer make to all and singular the premises, but not under oath (answer under oath being hereby expressly waived) and, further, to perform and abide by such further order, direction or decree as to the Court shall seem meet.

(6) That your orator may have such other and further relief in the premises as the nature and circumstances of this case may require and as to this Honorable Court shall seem meet.

And your orator, as in duty bound, will ever pray.

North American Co., by James Campbell, Its President. Sullivan & Cromwell, of Counsel. Thomas Bond, Atty. for Complainant.

*Duly sworn to by James Campbell. Jurat omitted in printing.*

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(Here follows Exhibit "A," a memorandum concerning the funded and other fixed interest bearing debt, omitted as per stipulation filed Aug. 26th, 1924, hereinafter set out.)

[fol. 11] IN UNITED STATES DISTRICT COURT

ORDER APPOINTING RECEIVERS, ETC.—May 27, 1913

On reading and considering the verified bill of complaint in this cause and on motion of counsel for the complainant, and the defendant, the St. Louis and San Francisco Railroad Company appearing by its counsel and assenting thereto and upon due deliberation, It is Ordered, adjudged and decreed as follows:

(1) That the said bill and answer be filed and the prayer of the bill for the appointment of a receiver or receivers in this cause be and the same is hereby granted.

(2) That Thomas H. West and Benjamin A. Mitchell be and they are hereby appointed receivers and invested with the powers of receivers in equity of all the franchises, liens, claims, rights, interests and property of every name and nature, either at law or in equity and wherever situated, of the St. Louis and San Francisco Railroad Company, and they are hereby authorized and directed forthwith to take possession thereof, to preserve, manage, operate and use the same, to run and operate the railroads now held by said company by lease or otherwise and to conduct the business of said company according to law and in accordance with the principles, rules and practice in equity in cases of this character. They are authorized to apply to any other courts in this Circuit or any other Circuit for ancillary orders to assist them in the exercise of their powers and the discharge of their duties. They are authorized and directed to collect all moneys due and all moneys to become due to said company, to institute and prosecute such suits in their own names as receivers or in the name of the company, as [they] attorney may advise, to defend such suits as may be brought against them and those now pending or hereafter brought against the company which affect or may affect the property of which they now are or may become receivers. They are also authorized with the advice of their attorney to compromise and settle the amounts owing from one party to the other in suits between them and third parties and between the company and third parties in ordi-

nary cases arising out of the common operation of the railroad.

(3) Out of the moneys coming to their hands they are authorized to pay, (1) the necessary expenses of operating the railroads and conducting the business during their receivership, (2) the taxes on the property, (3) the following claims incurred within six months preceding the date of this [fol. 12] order, the wages and salaries of employes of the company, the traffic and car mileage balances and accounts for car and equipment repairs.

(4) It is hereby ordered that all persons, firms and corporations in possession of any of the property of which receivers are hereby appointed forthwith deliver the same to them or to their representatives or agents.

(5) The railroad company and the officers, directors, agents, attorneys and employes thereof, and all other persons claiming to act by virtue of or under said railroad company, and all other persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, are hereby restrained and enjoined from interfering with, attaching, levying upon or in any manner whatsoever disturbing any portion of the properties and premises of which receivers are hereby appointed, or from taking possession of or in any manner interfering with the same or any part thereof, or from interfering in any manner or preventing the discharge by said receivers of their duties or the operation of said properties and the premises under the order of this Court.

(6) The receivers shall keep accurate accounts of their receipts and disbursements, take proper vouchers for their disbursements and file with the special master complete bi-monthly reports of their receipts and disbursements with the accompanying vouchers. They shall file with him an inventory of the properties coming into their possession as soon as they can conveniently prepare it.

(7) Within ten days from this date each of said receivers shall execute a bond with one or more sureties approved by this Court, or one of the Judges thereof, in the sum of \$100,000. for the benefit of whom it may concern, conditioned that they will well and truly perform the duties of

their offices and account for all moneys and properties which may come to their hands and abide by and perform all things which they shall be directed by the court to do and shall file this bond with the clerk of this Court.

(8) The complainant herein as well as the receivers may apply to any other court of competent jurisdiction for such order or orders in the premises as it may deem necessary in aid of the orders issued by this court.

(Signed) Walter H. Sanborn, Circuit Judge.

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[fol. 13] IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO FILE INTERVENING PETITION OF  
E. B. SPILLER—February 21, 1921

Upon consideration of the application of E. B. Spiller, for leave to file intervening petition herein, which was verified December 2, 1920, and of the arguments of counsel for the respective parties upon the hearing of this application—

It is hereby ordered that the application be granted; that the applicant have leave to file petition; that the St. Louis and San Francisco Railway Company answer the petition or take such other action against it as it may be advised within twenty days after the service of this order upon its attorneys, and that the issues raised by the intervention, be and they are hereby referred to the Special Master for hearing, consideration and report of the facts and his conclusions.

(Signed) Walter H. Sanborn, Senior Circuit Judge.

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MEMORANDUM OPINION ON APPLICATION GRANTING LEAVE TO  
FILE INTERVENING PETITION, ETC.—Filed February 12,  
1921

SANBORN, Circuit Judge:

In view of the opinion in *Love vs. North American Company*, 229 Fed. 123 and of the averments of the applicant's that on account of the necessity of first establishing their

claims by the findings and orders of the Interstate Commerce Commission they could not have enforced them in the foreclosure proceedings at any time before February 1, 1916, the limit of the time fixed for presenting claims by the orders in those proceedings, that they have been diligently establishing these claims by necessary litigation before the Interstate Commerce Commission, the District Court and the Supreme Court, and that they notified the attorneys for the purchasers at the foreclosure sale before they paid for their purchase of their claims and their intention to press them, the court is not persuaded that they are barred in this court of equity from a presentation and consideration of their claims either by the orders limiting the time within which claims were to be presented in the foreclosure proceedings, or by the inexcusable laches of the applicants.

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[fol. 14] IN UNITED STATES DISTRICT COURT

INTERVENING PETITION OF E. B. SPILLER—Filed December  
2, 1920

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

No. 4290. In Equity

JOINT RAILROAD COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

## No. 4304. In Equity

BANKERS TRUST COMPANY and NEILL A. McMILLAN, as  
Trustees, Complainants,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

## No. 4334. In Equity

GUARANTY TRUST COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, BANKERS  
TRUST COMPANY and NEILL A. McMILLAN, as Trustees,  
Defendants

## Consolidated Cause Final

Comes now E. B. Spiller, a citizen and resident of the State of Texas, and complaining of the said plaintiffs and of the said defendants and of the St. Louis & San Francisco Railway Company, and of the receivers in said cause, and pursuant to the final decree entered in the above entitled cause, at the City of St. Louis, on the 31st day of March, 1916, represents and shows to the Court, as follows:

1. That the defendant the St. Louis & San Francisco Railroad Company was at all times mentioned herein a common carrier engaged in the transportation of cattle in connection with other lines of railway, from points in Texas, Oklahoma and New Mexico, to Kansas City, St. Joseph and St. Louis, Missouri, National Stock Yards and Chicago, Illinois, New Orleans, Louisiana, and other live stock markets, and was a party to the tariffs, rates, fares and charges constituting joint rates and through rates from the points named in Appendix A to the order of the Inter-[fol. 15] state Commerce Commission hereinafter referred to and made a part hereof as an exhibit to this intervening petition, at the rates of shipment shown in said Appendix A.

2. That on the 12th day of January, 1914, the Interstate Commerce Commission, after full hearing and in all things

proceeding legally in the cause then pending before it, No. 732, entitled Cattle Raisers Association of Texas, et al. vs. Missouri, Kansas & Texas Railway Company, et al., to which the defendants St. Louis & San Francisco Railroad Company was a party, made its lawful order directing the defendant St. Louis & San Francisco Railroad Company and such other carriers named in said order, to pay to your intervening petitioner damages on account of charging the shippers named as consignors in said report and order unjust and unreasonable rates on shipments of cattle shown in said Appendix A, in the amounts therein named, said report and order of the Commission being unreported opinion No. A-583, hereto attached and made a part hereof as Exhibit "A," in which the unreasonable rates paid, the rates established by the Commission, the shipments made for which the unreasonable rates were paid, the amount of principal and interest as damages which the defendant and other carriers were directed severally to pay to the intervening petitioner, are fully set out in connection with the findings in said supplemental report and order of the said Interstate Commerce Commission, and in which amounts the shippers named as consignors who assigned their claims to intervening petitioner as therein shown were damaged by the defendant, St. Louis & San Francisco Railroad Company and said other carriers, respectively, as found by the said Commission and which your intervening petitioner, as assignee, as stated in said report of the Commission, is entitled to recover of the defendant and, St. Louis & San Francisco Railroad Company as follows:

Principal \$27,682.75   Interest \$2,529.56,   Attorneys fees \$3,021.23 and costs and interest at six per cent per annum from August 1, 1916.

3. That the damages so claimed grow out of the fact that in the year 1903 the defendant, St. Louis & San Francisco Railroad Company, and other railway companies defendants in said cause No. 732, and their connecting carriers, being engaged in the business of transporting cattle and other freight from said points of origin mentioned in said Appendix A, to the markets of destinations, as shown in said Appendix A, on or about March, 1903, advanced the rates for transporting cattle from said points of origin

[fol. 16] stated in said Appendix A and from other points, to Kansas City, St. Joseph and St. Louis, Missouri, National Stock Yards and Chicago, Illinois, New Orleans, Louisiana, and other points, the amount of the advancements applicable to shipments therein specified being the difference between the rates shown in the column of Appendix A marked "Rate paid" and the column marked "Rate ordered" which rate paid named in said Appendix A the shippers named as consignors in said list were compelled to pay to the defendant, St. Louis & San Francisco Railroad Company, on the shipments which they, respectively, made as therein shown, which advanced rates were found by the said Interstate Commerce Commission to be unjust and unreasonable and on account of the payment of which on the said shipments said St. Louis & San Francisco Railroad Company was ordered and directed to pay the said principal sum and interest to the intervening petitioner as assignee of the said shippers named as consignors, as shown in said report and order of the Commission, said Exhibit A hereto.

4. That after said rates were advanced and on February 10, 1904, the Cattle Raisers Association of Texas, a voluntary organization of live stock producers and shippers of Texas, Oklahoma and New Mexico, brought its complaint before the Interstate Commerce Commission against the said carrier and other carriers and their connecting lines of railway which had established said rates, alleging that said advanced rates were unjust and unreasonable, and the Commission, after full hearing of said complaint, in accordance with the Act to regulate commerce on August 16, 1905, by its report and opinion in cause No. 732, Cattle Raisers Association of Texas, et al. vs. Missouri, Kansas & Texas Railway Company, et al., reported in 11 I. C. C. 298, found it to be a fact that said advanced rates were unjust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce, and therefore unlawful as shown by the report of the Commission in said cause last above referred to, which report and opinion as published by the Interstate Commerce Commission is hereby referred to, and this intervenor asks that it be considered a part hereof. That said

advanced rates, notwithstanding the said decision of the Commission, remained in effect until November 17, 1908. That while the commission found as shown in its said report and opinion, that the said rates on cattle were advanced as aforesaid, and the advances thereof were unjust and unreasonable, no formal order was made by the Commission consequent upon its said report and opinion, because the [fol. 17] complainant in that case, the Cattle Raisers Association, upon the promulgation of that report and opinion, made application to the Commission for more specific findings of fact, which application had not been decided or disposed of, but held under advisement by the Commission until the Act to regulate Commerce was amended by what is known as the Hepburn law, effective August 28, 1906, and which application for more specific findings of fact was still pending before the Commission on August 29, 1906.

5. That on August 29, 1906, the said complainant, the Cattle Raisers Association of Texas, in behalf of itself and its members and others similarly situated, who were engaged in the business of raising, buying and shipping cattle from the State of Texas, Oklahoma, New Mexico and Colorado, over said lines of railway, to the markets shown as points of destination in said Appendix A hereinbefore referred to, filed its petition with the Interstate Commerce Commission reaffirming its previous allegations of its petition filed with the Commission February 1, 1904, charging that the rates on cattle from the points hereinbefore mentioned to the destinations mentioned, and the advances in said rates, and the rates as advanced, were unjust and unreasonable, and praying that the Commission should proceed with such further hearing as it might deem necessary with respect to the allegations that said rates were unjust and unreasonable, and for an order of the Interstate Commerce Commission prescribing the just and reasonable rates and praying for an order of reparation against the defendants respectively on behalf of the members of the Cattle Raisers Association of Texas, as shippers, and others similarly situated, for their respective damages accruing by reason of the payment of said unjust and unreasonable rates.

That thereupon the Interstate Commerce Commission, after answers duly filed by all the said defendants therein

and their connecting carriers, proceeded to a full hearing of the matters contained in said petition, and after such full hearing as provided by law, the Interstate Commerce Commission on April 14, 1908, by its report and opinion, 13 I. C. C. 419, in said cause, found that said rates as advanced and the advances of said rates were unjust and unreasonable, as found in the previous opinion of the Commission as above [fol. 18] referred to, reported in 11 I. C. C. 298, the finding of the Commission in its said report of April 14, 1908, being in part as follows:

"It is our opinion, therefore, that the advances shown in the appendix to our former report, which were effected by the defendants during the year 1903, were unjust and unreasonable; that the present rates produced by those advances are unjust and unreasonable; that the rates in effect previous to said advances would be just as reasonable and ought not to be exceeded for the future."

The report and opinion of the Interstate Commerce Commission as shown by the official report in said cause, 13, I. C. C. 419 as here referred to and intervening petitioner asks that the same be taken as a part hereof. That in said report and opinion the Commission reserved for further consideration the matter of reparation when the specific claims thereafter should be presented.

That the Commission, in its said last named report, and by supplemental order in said cause, prescribed and fixed the reasonable rates for shipments of cattle from the points of origin named in said Appendix A hereinbefore referred to, to the destination therein named, being the same rates designated therein as "Rate ordered," which became effective November 17, 1908.

6. That the said parties named as consignors in said Appendix A above referred to, being the owners thereof, shipped the carloads of cattle as therein shown, from the points to the destinations shown in said Appendix A and paid to the defendant, St. Louis & San Francisco Railroad Company and other carriers named in said report the rate of freight named in the column marked "Rate paid," which rates as aforesaid were held by the Commission to be unjust, unreasonable and unlawful at the dates of said shipments,

in the amounts as named in said Appendix A and that said owners as shippers and consignors were thereby damaged by defendants respectively, in the amount of the unjust and unreasonable part of the rates as shown by the difference between "Rate paid" and "Rate ordered," as shown in Appendix A. The rate paid was as aforesaid found by the Commission to be unjust and unreasonable and the rate ordered was found to be the just and reasonable rate applicable to such shipments, when made.

7. And the intervening petitioner alleges that the facts as found by the Commission in said reports and opinion [fol. 19] were true and correct. That said shippers named in said Appendix A as consignors, and E. B. Spiller, as Secretary of the Cattle Raisers Association of Texas, and his predecessor in office, H. E. Crowley, in due time and in accordance with law, filed and caused to be filed with the Interstate Commerce Commission for and on account of the shippers named as consignors, and on account of said Spiller and Crowley as assignees for and on account of said shipment and freight paid, their petitions and claims for reparation for the amount of said unlawful charge which the Commission by its said report and order of January 12, 1914, Exhibit A hereto, directed the defendants to pay. That the said claims and the rights of the said owners as shippers and consignors as aforesaid were duly and legally assigned to E. B. Spiller, as shown in the report and order, Exhibit A hereof, so that he became and was at the date of said order, and now is, the legal and equitable owner and holder thereof and entitled to have and recover the damages resulting to said shippers by reason of the premises, and as such was entitled to have the order of the Interstate Commerce Commission as aforesaid ordering and directing the said carriers in said cause to pay said principal and interest, together with interest thereon, and is entitled to recover the same together with interest and attorneys' fees as provided by law.

8. That the said order of the Interstate Commerce Commission, Exhibit A hereof, directing the railroads therein named to pay the aforesaid damages as therein shown, was duly served upon each of the railway companies defendants herein, including St. Louis & San Francisco Railroad Com-

pany, but, though often requested, the said defendant, St. Louis & San Francisco Railroad Company, failed and refused and still fails and refuses to pay the same or any part thereof, and is therefore liable to the intervening petitioner in the full amount of said damages, principal, interest and attorneys' fees.

9. That thereafter and within one year from January 12, 1914, the date when said Interstate Commerce Commission ordered said defendant, St. Louis & San Francisco Railroad Company to pay to the intervening petitioner said sum of money as aforesaid, the intervening petitioner filed his petition in the District Court of the United States for the Western Division of the Western District of Missouri, against the said defendant, St. Louis & San Francisco Railroad Company and other railway carriers, setting up the facts as aforesaid and of the order of said Interstate Commerce Commission requiring said defendant to pay to the intervening petitioner said sum of money and praying citation in due form against said defendant and on final hearing a judgment for the aforesaid damages, interest, costs and attorneys' fees. That thereafter the said defendant, St. Louis & San Francisco Railroad Company, having been duly served with summons duly entered its appearance in said cause and said cause coming on thereafter to be heard upon the issues made by the pleadings therein, was tried and determined in said Court, a jury being waived by agreement and the facts found by the court as alleged and on the 16th day of August, 1916 judgment was rendered by said Court in favor of your intervening petitioner against said St. Louis & San Francisco Railroad Company for the sum of \$30,212.31, together with interest thereon from August 1, 1916 at six per cent per annum until paid and the further sum of \$3,021.23 as attorneys' fees for prosecuting said action, which the said court found to be reasonable and which attorneys' fees said Court adjudged should be taxed as costs in said case. A true and verified copy of that portion of said judgment referred to said St. Louis & San Francisco Railroad Company being hereto attached and marked Exhibit B and made a part hereof. That no part of said judgment has been paid, that thereafter an appeal from the said judgment of said District Court of

the United States for the Western Division of the Western District of Missouri was taken by the said defendant, St. Louis & San Francisco Railroad Company and said other carriers, to the United States Circuit Court of Appeals for the Eighth Circuit; that thereafter, to-wit, on or about the 11th day of March, 1918, said United States Circuit Court of Appeals reversed said judgment of said District Court and remanded said cause to said District Court for a new trial; that a copy of said judgment of said Court of Appeals is hereto attached, made a part hereof and marked Exhibit C; that thereafter and in due time, this intervening petitioner, by writ of [certiorari] appealed from said judgment of said United States Circuit Court of Appeals in said Eighth Circuit to the Supreme Court of the United States; that thereafter and about the 17th day of May, 1920, the Supreme Court of the United States reversed the judgment of said Circuit Court of Appeals of said Eighth Circuit and affirmed the judgment of said District Court of the United States for the Western Division of the Western District of Missouri, with costs, and remanded said cause to the said District Court; that a copy of said judgment is hereto attached made a part hereof and marked Exhibit D; [fol. 21] that thereafter and on or about the — day of July, 1920, this intervening petitioner filed his application and motion in said District Court of the United States for the Western Division of the Western District of Missouri for an order allowing additional attorneys' fees for the services of his attorneys in connection with the appeals of said cause in the Circuit Court of Appeals and in the Supreme Court; that thereafter and on or about the 10th day of July, 1920, said District Court for the said Western Division of the Western District of Missouri sustained said motion and application and made an additional allowance of attorneys' fees; that by the terms of said order and judgment allowing additional attorneys' fees, the total attorneys' fees ordered paid by the defendant St. Louis & San Francisco Railroad Company, in said cause was \$4,586.32 which amount was by said Court taxed as costs in said case against the defendant, St. Louis & San Francisco Railroad Company, a copy of said last mentioned order is hereto annexed marked Exhibit E.

That the defendant, St. Louis & San Francisco Railway Company has paid a part of the costs taxed against the St. Louis & San Francisco Railroad Company in said case, including \$3,351.00 as part of the attorneys' fees, leaving a balance due and unpaid of \$30,212.31 with interest from August 1, 1916 at six per cent per annum thereon, and also a balance of \$1,235.00 of said costs unpaid.

10. Your intervening petitioner further shows to the Court that subsequent to the collection of said excess charges by the said St. Louis & San Francisco Railroad Company, there was at all times in its treasury down to the date of the appointment of Thomas H. West and Benjamin L. Winchell as receivers thereof an amount of money equal to or in excess of the aggregate of the sum so collected in excess of the reasonable amount of said freights; that the gross receipts of the said St. Louis & San Francisco Railroad Company from the time of the collection of said excess charges down to the appointment of said receiver were in excess of its actual operating expenses, and since the appointment of said receiver the gross receipts have continuously been in excess of its actual operating expenses; that since the collection of said excess charges the said St. Louis & San Francisco Railroad Company has paid large sums in excess thereof, by way of interest on its mortgage indebtedness, and has expended for betterment and improvements large sums greatly in excess of said excess charges; that when said receivers were appointed they received from the St. Louis & San Francisco Railroad Company, as shown by their inventory filed herein, in cash, over \$300,000.00; that eliminating all items except current receipts and current expenses, the earnings of said St. Louis & San Francisco Railroad Company, from the time of said excess charges were collected down to the appointment of said receiver were largely in excess of its operating expenses; that the money so paid by said shippers in excess of the reasonable and legal rate as fixed by said Interstate Commerce Commission, was illegal exaction and said money belonged to the shippers after the payment thereof the same as it did before such payment; that it was a part of the money in the treasury of the defendant company which passed to the receivers; that said money was

not in any way subject to any liens of the mortgages or other instruments of writing executed by the defendant, St. Louis & San Francisco Railroad Company, and that by reason of the premises your intervening petitioners have a claim prior in lien and superior in equity to the liens and claims of any and all of the bondholders, trustees and mortgagees and other claimants holding claims or demands against said St. Louis & San Francisco Railroad Company; that it became and was the duty of said defendant Railroad Company and of its receivers and of the St. Louis & San Francisco Railroad Company to repay to the intervening petitioner the amount of said judgment, interest, attorneys' fees and costs.

11. That — is provided in and by Article ninth of the final decree heretofore entered in this cause that the purchaser of any of the property described in Article 26 or Article 27 of said decree and his or their successors ad assigns shall as part of the consideration for any and all of the purchase price of the property purchased, and and in addition to the sums bid by them and elsewhere in said decree required to be paid by him or them, take such property and receive the deeds or other instruments of conveyance and transfer thereof upon the express condition that he and they, or his and their successors or assigns shall pay, satisfy and discharge:

“B. Any unpaid claims or creditors of the defendant railroad company which have been or shall be admitted by the parties in interest or adjudged by this Court to be prior in lien or superior in equity to the refunding mortgage or the general lien mortgage.”

It is further provided in and by the last paragraph of said Article 9 of the final decree, that:

[fol. 23] “In the event any purchaser, or successor or assigns, after demand made, shall refuse to pay any of the above mentioned indebtedness or liabilities which under the foregoing provision of this Article Ninth he is or may be required to pay, the person holding the claim, therefor upon twenty days notice to such purchaser, his successors or assigns, may file a petition in this court to have such

claim enforced against the property sold to such purchaser in accordance with the usual practice of this court in relation to payments of a similar character."

It is further provided by said final decree, that "all questions not hereby disposed of are reserved for future adjudication", and by its last order made on the 29 day of January, 1918, the court further reserved unto itself jurisdiction in this cause for the purpose of determining questions and rights that may thereafter be presented to it. The intervenor states that its claim and justment as aforesaid is prior in lien and superior in equity to the refunding mortgages or to the general lien mortgages, by reason of the facts stated aforesaid; that the St. Louis & San Francisco Railway Company is the purchaser of the properties of the St. Louis & San Francisco Railroad Company sold under the decree of this court in these cases, and that it thereby acquired all money in the hands of the receivers not otherwise used and disposed of, in accordance with the order of this court. That the intervenor duly demanded of the said St. Louis & San Francisco Railway Company, payment of said judgment, interest and costs, after the same had been made final by the decision and mandate of the United States Supreme Court which payment the said St. Louis & San Francisco Railway Company, purchaser, as aforesaid, refused to pay. That intervenor heretofore on the 2nd day of December, 1920, gave to said St. Louis & San Francisco Railway Company as such purchaser, twenty days' notice of its intention to file this petition in this court to have such claim enforced against the property sold to it in accordance with the usual practice of this court in relation to payments of similar character.

12. Intervenor further states, that the St. Louis & San Francisco Railroad Company, the receivers thereof, all of the parties to this cause, and the said St. Louis & San Francisco Railway Company as purchaser of said property, had full knowledge and notice prior to the sale of said property under the order of this court and prior to the confirmation of said sale that this intervenor had such claim and that it was being prosecuted in the courts of this [fol. 24] circuit and in the Supreme Court of the United

States, and that intervenor's claim was prior in lien and superior in equity to the liens of said refunding bonds and of said general mortgage lien bonds and all other liens and claims against the defendant railroad company's property. That this intervenor and his attorneys had no knowledge or notice whatever of the order of this court requiring persons having any claims or demands against the said railroad company to present and file their claims herein within the time therein fixed, or at any time; that he had no knowledge or notice whatever of the final decree entered herein at the time the same was so entered or at the time said railroad properties were sold under said decree; that the first knowledge and notice that the intervenor and his attorneys, or any of them, had of said order of this court requiring the presentation of claims and of the final decree herein, was in August, 1916, at the time of the prosecution to this court of certain objections to the confirmation of the sale, at which hearing at St. Louis, Missouri, the intervenor's attorneys were present and they then and there gave notice to the attorneys for the Reorganization Committee and for the purchasers of said railroad, and for the said railway company and the said railroad company, and the attorneys for the said Guaranty Trust Company and the Bankers Trust Company, and all other parties to said cause, that the United States District Court for the Western Division of the Western District of Missouri, had given judgment on August 16, 1916, in intervenor's favor against the said railroad company for the amount as set forth above, and that intervenor would claim the same as prior in lien and superior in equity to the lien and claim of all of the other persons whosoever against the property of the said railroad company; that when this intervenor and his attorneys first learned of said order made by this court requiring all persons having any claims or demands to present the same on or before the 1st day of February, 1916, said time had expired; that intervenor was prosecuting his claim in the United States District Court for the Western Division of the Western District of Missouri, because he was required so to do by Sec. 16 of the Interstate Commerce act, which provides:

If the carrier does not comply with an order for the payment of money within the time limited in such order, the

complainant, or any person for whose benefit such order was made, may file in the Circuit Court of the United States for the District in which he resides or in which is located the principal operating office of the carrier or [fol. 25] through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims the damages and the order of the Commission in the premises."

The railroad companies having failed to pay the amount ordered by the Interstate Commerce Commission on January 12, 1914, the only remedy intervenor had, was to follow the remedy prescribed by Act of Congress as set forth in said Section 16. The order of the Commission was dated January 12, 1914, which was duly served upon the said defendant railroad company and service thereof is acknowledged by it in subsequent proceedings based upon said order, prosecuted in the United States District Court for the Western Division of the Western District of Missouri. The receivers had been appointed by the order of this court in May, 1913. They therefore had knowledge, by virtue of the order so made and served upon said railroad company, of the amount found to be owing and due by said railroad company to your intervenor. Said railroad company by its attorneys, who were the same attorneys who acted for and in behalf of the receiver of said railroad company, appeared in said cause and actively defended the same, and took an appeal from the judgment of the United States District Court for the Western Division of the Western District of Missouri to the United States Circuit Court of Appeals for the Eighth Circuit, and there appeared and vigorously contested the decision of the said United States District Court, and also appeared and vigorously contested the decision of the United States Supreme Court in said case; that said railroad company gave bond for the costs that might accrue upon its appeal from the judgment of the United States District Court to the United States Circuit Court of Appeals, and afterwards recognizing its liability upon the bond and in order to protect its surety on said bond for costs, the defendant, St. Louis & San Francisco Railway Company has paid to the intervenor a

part of the costs therein unpaid and for which its bondsmen would be liable.

The appointment of the receivers made on the petition of the bondholders was May 22, 1914, so that said receivers were in full charge of the defendant railroad Company's property at the time intervener commenced suit against the said railroad company and other railroad companies, to recover upon the orders made by the Interstate Commerce Commission. Said suits were first commenced at Fort Worth, in the State of Texas, which were afterwards dis-[fol. 26] missed because all of the railroad companies, including the St. Louis & San Francisco Railroad Company, objected to the jurisdiction, claiming a right to be sued in the district where their principal offices were located, or in some district where the railroads operate. To avoid the question of jurisdiction, therefore, said suit was commenced by the intervener at Kansas City, in the United States District Court for the Western Division of the Western District *District* of Missouri, against all of the carriers affected by said proceedings, and at the same time a separate suit was commenced in this court in this division against the said St. Louis & San Francisco Railroad Company and process served upon said railroad company, of which the said receivers had full notice and knowledge, which last named suit was afterwards dismissed after judgment had been rendered in the joint suit brought at Kansas City. That service of process in said said case at Kansas City. That service of process in said case at Kansas City was first had upon the agents of said Receivers and the defendant Railroad Company made a special appearance therein and objected to said service, whereupon further service was had upon said railroad company. It was due entirely to protracted litigation and determined efforts upon the part of the railroad company and of the said receivers and of the said purchaser of the Railway Company after the purchase of said railroad by it, to defeat the rights of the intervener and to have the courts decide that intervener had no claims of any kind against the railroad company. That said claim was not reduced to judgment in ample time for intervener to have intervened in this case and presented its demand against the said

railroad company within the time ordered by the court. Intervener further states that the principal object of said order was to give notice to all persons dealing with the property and to advise the court of the fact that such claim did exist and that that object was fully obtained by the actual notice and knowledge on the part of the railroad company, of the receivers appointed by this court, and of all of the parties to this consolidated suit, and the attorneys, of the fact that such claim existed and was being prosecuted vigorously as possible in the courts of this circuit and of the United States Supreme Court. That intervener, in August, 1916, at the time of the argument of the objections to the confirmation of the sale made by the Master gave personal and written notice to Henry W. Taft and the other attorneys representing the Reorganization Committee, and the purchasers of the property the sale of which was then [fols. 27 & 28] asked to be confirmed; that said notice was given to them in the court room of the Honorable Walter H. Sanborn, Judge presiding where he was at the time sitting in St. Louis, Mo., of all the facts under which the judgment had been rendered by the said United States District Court at Kansas City, and that appeal had been taken, and that said case was then pending in the United States Court of Appeals.

Intervener further states, that no offer of any kind has ever been made by any of the parties to this case, either the defendant railroad company or the purchaser, the railway company, or any of the mortgage bondholders or others, to make any payment of this claim of the intervener, of any kind and nature, or to make any settlement whatsoever with the intervener on account thereof; so that intervener says that said Railway Company, said Railroad Company, said trustees and mortgage bondholders and stockholders have each and all had full knowledge and notice of the pendency of the intervener's claim and demand and of the nature thereof.

Wherefore, the premises considered, intervener respectfully asks this court to make an order permitting it to file this, its intervening petition, to order that it be referred to a Master in Chancery, that upon a hearing it be ordered, adjudged and decreed by the court that this intervener has

a just demand for the amount of said judgment, to-wit: Thirty Thousand Two Hundred Twelve and 31/100 (\$30,212.31) with interest thereon from August 1, 1916 at six per cent per annum, and \$1,235.00 attorneys' fees taxed as costs; that is a just demand, prior in lien and superior in equity to the refunding mortgage and the general lien mortgage of the sand St. Louis & San Francisco Railroad Company, and that unless paid such claim be enforced against the property sold to the St. Louis & San Francisco Railway Company under the final decree of this court entered in this cause, in accordance with the usual practice of this court in relation to payments of claims of a similar character.

S. H. Cowan, B. F. Deatherage, Solicitors for Intervener.

*Duly sworn to by B. F. Deatherage. Jurat omitted in printing.*

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Pages 4 to 51, both inclusive, of Exhibit A, which are here omitted, set forth the names of claimants and the amounts of their claims against carriers other than the St. Louis-San Francisco Railroad Company.

Claims Against St. Louis & San Francisco Railroad Company, The Delivering Line In Each Shipment.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate or- dered.	Amount of refund.	Interest.
			No.	Pounds.	Cents.	Cents.		
Allen, John. (S).....	Kaufman, Tex.....	National Stock Yards, Ill...	5	110,000	42½	39½	\$33.00	\$11.03
Allen & Mulkey. (S).....	...do.....	...do.....	2	44,000	42½	39½	13.20	4.35
Allen, O. T. (S).....	Talihina, Okla.....	...do.....	7	154,000	37	29½	115.50	44.81
Ambrister Bros. (S).....	Weleetka, Okla.....	Kansas City, Kans.....	4	88,000	27½	24½	26.40	10.46
Bailey & Townsend.....	Oklmulgee, Okla.....	National Stock Yards, Ill...	5	110,000	31	29	22.00	8.60
Baker & Brown.....	Ryan, Okla.....	...do.....	2	44,000	42½	39½	13.20	4.26
Baker Bros. (S).....	Tuttle, Okla.....	...do.....	33	726,000	39	36	217.80	69.94
Baker & Strickler. (S).....	...do.....	Kansas City, Kans.....	64	1,408,000	39	36	422.40	
Do.....	...do.....	...do.....	40	880,000	31½	28	308.00	
Baldrige, L. L. (S).....	Red Fork, Okla.....	National Stock Yards, Ill...	13	286,000	30¾	27½	730.40	266.59
Baker & Wiggleworth. (S).	Tuttle, Okla.....	...do.....	62	1,364,000	39	36	409.20	
Do.....	...do.....	Kansas City, Kans.....	48	1,056,000	31½	28	369.60	
Barker, R. P. (S).....	Beggs, Okla.....	National Stock Yards, Ill...	110	2,420,000	...	...	778.80	280.43
Barker & Thompson. (S).....	...do.....	...do.....	15	330,000	30¾	29	41.25	16.59
	...do.....	...do.....	2	44,000	30¾	29	5.50	2.13

B. G. Barnes, Mgr., Indio Cattle Co. (S).	do.....	do.....	26	572,000	30¼	29	71.50	23 96
M. C. Barnes & Son. (S).	Scullin, Okla.....	do.....	7	154,000	41	38	46.20	
Do.....	Davis, Okla.....	do.....	4	88,000	41	38	26.40	
			11	242,000			72.60	26.25
Barnes, M. M. (S)	Amber, Okla.....	do.....	6	132,000	39½	36	46.20	18.14
Barrett, M. H. (S)	Ryan, Okla.....	do.....	5	110,000	42½	39½	33.00	13.04
Barringer, J. L. (S)	Ada, Okla.....	do.....	3	66,000	40½	37½	19.80	
Do.....	do.....	do.....	3	66,000	40	37½	16.50	
			6	132,000			36.30	13.77
Barringer, W. M.....	do.....	Kansas City, Kans.....	2	44,000	32½	29½	13.20	4.48
Batte, R. L. (S).....	Cameron, Tex.....	National Stock Yards, Ill..	2	44,000	48½	45½	13.20	5.37
Battles & Denton.....	Red Oak, Okla.....	do.....	6	132,000	37	29	105.60	
Do.....	Cameron, Okla.....	do.....	2	44,000	29	24½	19.80	
			8	176,000			125.40	29.97
Battles, G. W.....	Stuart, Okla.....	do.....	5	110,000	39	36	33.00	12.85
Beattie & Witherspoon. (S).	Scullin, Okla.....	do.....	6	132,000	41	38	39.60	
Do.....	Mill Creek, Okla...	do.....	7	154,000	41	38	46.20	
Do.....	do.....	Kansas City, Kans.....	7	154,000	34	30¾	50.05	
Do.....	Scullin, Okla.....	do.....	1	22,000	34	30¾	7.15	

Bedwell, J. A. (S).....	Holdenville, Okla.....	21	462,000	31	28	143.00	46.76
Beeler, F. G. (S).....	Scullin, Okla.....	2	44,000	31	28	13.20	4.37
Do.....	do.....	11	242,000	34	30½	78.65	
	National Stock Yards, Ill...	6	132,000	41	38	39.60	
	do.....	17	374,000			118.25	39.24
Belche, F. N.....	Chickasha, Okla.....	1	22,000	32½	29	7.70	
Do.....	Laverty, Okla.....	1	22,000	33	29½	7.70	
	do.....	2	44,000			15.40	5.05
Bilby, N. V. (S).....	Ryan, Okla.....	2	44,000	42½	39½	13.20	4.30
Blocker & Johnson. (S)...	Comanche, Okla.....	19	418,000	41¼	38	135.85	44.63
Blocker, J. R. (S).....	Vinita, Okla.....	9	198,000	25¾	25¼	9.90	3.27
Bobbitt, A. A. (estate). (S)...	Ada, Okla.....	2	44,000	40	37½	11.00	3.58
Boedecker & Ball.....	Bowie, Tex.....	3	66,000	42½	39½	19.80	8.06
Borden, A. P., exec. (S)...	Pierce, Tex.....	4	88,000	51½	48½	26.40	11.42
Bourland-Barefoot L. S. Com. Co. (S).....	Arapahoe, Okla.....	6	132,000	31	28	39.60	16.97
Brown & Biggestaff.....	Beggs, Okla.....	11	242,000	30¼	29	30.25	11.84
Brown, T. J.....	Mounds, Okla.....	15	330,000	29¼	29	8.25	3.15
Brownwood Oil Mill. (S)...	Brownwood, Tex.....	103	2,266,000	45½	42½	679.80	276.58
Buchanan, S. H. (S).....	Beggs, Okla.....	13	286,000	30¼	29	35.75	11.55
Bucholtz, J. M. (S).....	Madill, Okla.....	5	110,000	35½	30¾	52.25	21.49
	Kansas City, Kans.....						
Buel, Pryor & Daniels. (S)...	Oklmulgee, Okla.....	86	1,892,000	31	29	378.40	
Do.....	Schulter, Okla.....	9	198,000	33	30	59.40	

Burnett, C., & Co. (S).....	Ryan, Okla.....	95	2,090,000	.....	.....	437.80	169.37
Burnett, T. L.....	.....do.....	8	176,000	42½	39½	52.80	17.18
Cage Cattle Co. (S).....	Addington, Okla.....	11	242,000	41½	38	84.70	30.48
Cain & Kelley.....	Beggs, Okla.....	33	726,000	30¼	29	90.75	39.75
Do.....	Henryetta, Okla.....	3	66,000	34¾	30	31.35	
	Oklmulgee, Okla.....	4	88,000	31	29	17.60	
		7	154,000	.....	.....	48.95	16.92

Claims Against St. Louis & San Francisco Railroad Company, The Delivering Line In Each Shipment—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate paid.	Rate or-dered.	Amount of refund.	Interest.
			No.	Pounds.	Cents.	Cents.		
Carrow, R. (S).....	Bowie, Tex.....	National Stock Yards, Ill...	8	176,000	42½	39½	\$52.80	\$21.93
Cartwright, Matthew. (S).....	Kaufman, Tex.....	.....do.....	33	726,000	42½	39½	217.80	77.89
Cherryholm, T. H. (S).....	Jacksboro, Tex.....	.....do.....	3	66,000	42½	39½	19.80	7.21
Chilton & Willa. (S).....	Mounds, Okla.....	.....do.....	9	198,000	29¼	29	4.95	2.16
Chisum, Thos.....	Beggs, Okla.....	.....do.....	7	154,000	30¼	29	19.25	7.48
Clark, P. R.....	San Angelo, Tex.....	.....do.....	2	44,000	49	46	13.20	4.20
Clotfelter, J. H. (C).....	Schulter, Okla.....	Kansas City, Kans.....	6	132,000	25	22½	33.00	
Do.....	.....do.....	National Stock Yards, Ill...	15	350,000	33	30	99.00	
			21	482,000	.....	.....	132.00	49.86

Cloudt, F. (S)	do	do	36	792,000	33	30	237.60	76.22
Cobb, J. K. & Co. (S)	Mill Creek, Okla.	do	4	88,000	41	38	26.40	8.67
Cochran & Roff. (C)	Roff, Okla.	do	11	242,000	41	38	72.60	23.79
Coffman, W. L. (S)	Mounds, Okla.	do	8	176,000	29½	29	4.40	1.84
Corbin, W. W. (S)	Seullin, Okla.	do	1	22,000	41	38	6.60	
Do	Mill Creek, Okla.	do	3	66,000	41	38	19.80	
			4	88,000			26.40	9.53
Corn, J. W. (S)	Plover, Tex.	do	1	22,000	42½	39½	6.60	
Do	Waleetka, Okla.	do	24	528,000	36¼	32½	198.00	
Do	do	Kansas City, Kans.	18	396,000	27½	24½	118.80	
Do	Chandler, Okla.	do	10	220,000	31	27½	77.00	
			53	1,166,000			400.40	151.35
Cassidy, Courtney & Doerr. (S)	Beggs, Okla.	National Stock Yards, Ill.	59	1,298,000	30¼	29	162.25	
Do	Mill Creek, Okla.	do	13	286,000	41	38	85.80	
Do	Beggs, Okla.	Kansas City, Kans.	6	132,000	21½	21	6.60	
			78	1,716,000			254.65	88.88
Crawford, J. P. (S)	Cordell, Okla.	do	10	220,000	33	30½	55.00	21.44
Crider & Russell. (S)	Mounds, Okla.	National Stock Yards, Ill.	3	66,000	29¼	29	1.65	.71
Cummings, A. M. (S)	Stuart, Okla.	do	3	66,000	39	36	19.80	6.55
Cummings, C. M. (S)	do	do	1	22,000	39	36	6.60	
Do	Calvin, Okla.	do	1	22,000	39	36	6.60	

34	Cummings & Moode. (S)...	Stuart, Okla.....	do.....	2	44,000	.....	.....	13.20	4.33
	Davis Bros. (S).....	Tuskahoma, Okla..	Kansas City, Kans.....	9	198,000	39	36	59.40	19.32
	Do.....	Olney, Okla.....	National Stock Yards, Ill...	3	66,000	33	29½	23.10	
	Do.....	Seullin, Okla.....	do.....	5	110,000	39½	38	16.50	
	Do.....	Coalgate, Okla.....	do.....	1	22,000	41	38	6.60	
	Do.....	Tuskahoma, Okla..	do.....	5	110,000	40½	38	27.50	
				6	132,000	39	35	52.80	
				20	440,000	.....	.....	126.50	55.44
	Davis & Jennings. (S)....	Duncan, Okla.....	do.....	66	1,452,000	41¼	38	471.90	
	Do.....	Comanche, Okla...	do.....	2	44,000	41¼	38	14.30	
				68	1,496,000	.....	.....	486.20	157.37
	Davis, R. L. (S).....	Madill, Okla.....	Kansas City, Kans.....	2	44,000	35½	30¾	20.90	8.90
	Davis, W. L. (S).....	Addington, Okla...	National Stock Yards, Ill...	4	88,000	41½	38	30.80	10.13
	Dublin Cotton Oil Co. (S)	Dublin, Tex.....	do.....	62	1,364,000	44½	41½	409.20	166.64
	Dumas, J. D. (S).....	Wapanucka, Okla..	do.....	1	22,000	39½	38	3.30	1.45
	Durant, Tom.....	Beggs, Okla.....	do.....	8	176,000	30¼	29	22.00	9.65
	Dykes, W. L. (S).....	Tishomingo, Okla...	do.....	3	66,000	39½	38	9.90	
	Do.....	Mill Creek, Okla...	do.....	1	22,000	41	38	6.60	
				4	88,000	.....	.....	16.50	6.92
	Eaton, J. R. (S).....	Ladonia, Tex.....	do.....	14	308,000	42½	39½	92.40	37.95
	Elliott, Lee. (S).....	Talihina, Okla...	do.....	5	110,000	37	29½	82.50	33.78

Elliott, S. H.	Schulter, Okla.	7	154,000	33	30	48.20	19.32
Evans, R. M.	Stuart, Okla.	3	66,000	39	36	19.80	6.34
Fogleman, C. J.	Kaufman, Tex.	3	66,000	42½	39½	19.80	6.67
French, M. N. (S)	Tuttle, Okla.	15	330,000	39	36	99.00	37.39
French, W. A. (S)	Kaufman, Tex.	2	44,000	42½	39½	13.20	4.47
Friend, J. W., & Son. (S)	Beggs, Okla.	8	176,000	30½	29	22.00	8.29
Gatewood, F. W. (S)	Mill Creek, Okla.	5	110,000	41	38	33.00	12.79
Gatewood, R. E. (S)	Tuttle, Okla.	14	308,000	39	36	92.40	31.44
Gibson & Edwards Bros. (S)	Beggs, Okla.	12	264,000	21½	21	13.20	5.74
Glascock & Barksdale. (S)	do.	7	154,000	21½	21	7.70	
Do.	do.	9	198,000	30½	29	24.75	
	National Stock Yards, Ill.	16	352,000			32.45	10.35
Glascock, W. A. (S)	do.	8	176,000	21½	21	8.80	2.83
Graham, J. W. (S)	Sculin, Okla.	43	946,000	34	30¾	307.45	
Do.	Mill Creek, Okla.	1	22,000	41	38	6.60	
Do.	do.	2	44,000	34	30¾	14.30	
Do.	Sculin, Okla.	2	44,000	41	38	13.20	
	National Stock Yards, Ill.	48	1,056,000			341.55	129.56

## Claims Against St. Louis &amp; San Francisco Railroad Company, The Delivering Line In Each Shipment—Continued.

Consignor.	Origin.	Destination.	Cars.	Weight.	Rate Paid.	Rate or- dered.	Amount of refund.	Interest.
			No.	Pounds.	Centa.	Centa.		
Gregg Bros. (S).....	Ada, Okla.....	National Stock Yards, Ill...	5	110,000	40	37½	\$27.50	
Do.....	do.....	Kansas City, Kans.....	2	44,000	33½	29½	17.00	
			7	154,000			45.10	\$14.95
Hall, R. L.....	Stuart, Okla.....	National Stock Yards, Ill...	3	66,000	39	36	19.80	6.38
Hamilton, J. R.....	San Angelo, Tex.....	do.....	3	66,000	49	46	19.80	6.63
Harness, J. H. (S).....	Chichasha, Okla.....	do.....	3	66,000	40	36	26.40	8.77
Harrold & Barnes. (S)...	Tuttle, Okla.....	do.....	2	44,000	31½	28	15.40	
Do.....	Amber, Okla.....	do.....	7	154,000	39½	36	53.90	
Do.....	Wynnewood, Okla.....	do.....	29	638,000	41	38	191.40	
			38	836,000			260.70	110.15
Haynes & Hogenkamp.....	Oklmulgee, Okla.....	do.....	6	132,000	31	29	26.40	10.53
Hensley & Brummitt.....	Addington, Okla.....	do.....	9	198,000	41½	38	69.30	22.61
Hodges & Payne.....	Mill Creek, Okla.....	do.....	27	594,000	41	38	178.20	57.35
Holder & Graham. (S)...	Scullin, Okla.....	Kansas City, Kans.....	2	44,000	34	30¾	14.30	4.72
Holder, R. B. (S).....	do.....	do.....	2	44,000	34	30¾	14.30	
Do.....	Mill Creek, Okla.....	do.....	1	22,000	34	30¾	7.15	

Holdman, J. C. (S)	Stuart, Okla.	National Stock Yards, Ill.	3	66,000	.....	.....	21.45	7.06
Holdridge & Lovelady. (S)	Beggs, Okla.	do.	3	66,000	39	36	19.80	6.31
Holt, J. T. (S)	Honey Grove, Tex.	do.	8	176,000	30 1/4	29	22.00	8.34
Hubbard, C. D. (S)	Comanche, Okla.	do.	23	506,000	42 1/2	39 1/2	151.80	61.58
		do.	11	242,000	41 1/4	38	78.65	29.31
Huffman, H. L. (S)	Holdenville, Okla.	do.	16	352,000	39	36	105.60	
Do.	do.	Kansas City, Kans.	1	22,000	31	28	6.60	
			17	374,000	.....	.....	112.20	42.12
Ingram, J. T. (C)	Woodville, Okla.	National Stock Yards, Ill.	4	88,000	42	39	26.40	8.63
Inman & Thompson. (S)	Chickasha, Okla.	Kansas City, Kans.	2	44,000	32 1/2	29	15.40	6.25
Inman, Wm. (S)	do.	do.	3	66,000	32 1/2	29	23.10	9.43
Irvine & Mills. (S)	Beaumont, Tex.	National Stock Yards, Ill.	10	220,000	\$95.35	\$88.75	66.00	22.35
Jackson, G. W.	Wapanucka, Okla.	do.	2	44,000	39.50	38	6.60	2.89
Jackson, R. H.	Holdenville, Okla.	Kansas City, Kans.	7	154,000	31	28	46.20	15.18
James & Cardin.	Mill Creek, Okla.	National Stock Yards, Ill.	2	44,000	41	38	13.20	4.31
James & Jamison.	do.	do.	15	33,000	41	38	99.00	32.07
Jennings & Green. (S)	do.	do.	4	88,000	41	38	26.40	11.52
Jennings, W. H. (C)	Comanche, Okla.	do.	10	220,000	41 1/4	38	71.50	
Do.	Duncan, Okla.	do.	6	132,000	41 1/4	38	42.90	
			16	352,000	.....	.....	114.40	43.36
Johns, E. F. & Thos. (S)	Chickasha, Okla.	Kansas City, Kans.	12	264,000	32 1/2	29	92.40	37.40
Johnson, J. A. (S)	Quanah, Tex.	do.	8	176,000	36 1/4	33 1/2	52.80	19.53

<sup>1</sup> Dollars per car.

CS Kapp, H. (S).....	Rush Springs, Okla.	National Stock Yards, Ill...	23	500,000	41	37½	177.10	56.52
CO Keith, G. J. (S).....	Addington, Okla.	do.....	6	132,000	41½	38	46.20	17.83
Keith, J. L. (S).....	do.....	do.....	4	88,000	41½	38	30.80	10.00
Kelley, J. E. ....	Beggs, Okla.	do.....	2	44,000	30¼	29	5.50	
Do.....	Okmulgee, Okla.	do.....	1	22,000	31	29	4.40	
			3	66,000			9.90	4.17
Kennedy, L. W. (S).....	Beggs, Okla.	Kansas City, Kans.....	3	66,000	21½	21	3.30	
Do.....	do.....	National Stock Yards, Ill...	3	66,000	30¼	29	8.25	
			6	132,000			11.55	3.94
Kerley, H. A. (S).....	Addington, Okla.	do.....	2	44,000	41½	38	15.40	5.13
Kimble & Co.....	Beggs, Okla.	do.....	1	22,000	30¼	29	2.75	
Do.....	Mounds, Okla.	do.....	1	22,000	29¼	29	.55	
			2	44,000			3.30	1.29
King Bros.....	Terrell, Tex.....	do.....	1	22,000	42½	39¼	6.60	2.02
King, Mrs. H. M.....	Scullin, Okla.....	do.....	36	792,000	41	38	237.60	
Do.....	Mill Creek, Okla...	do.....	12	264,000	41	38	79.20	
Do.....	Ravia, Okla.....	do.....	17	374,000	41½	38	130.90	
			65	1,430,000			447.70	144.27

Knox, J. W.	Jacksboro, Tex.	do.	25	550,000	42½	30½	105.00
Do.	do.	Kansas City, Kans.	5	110,000	36½	33½	33.00
			30	660,000			198.00
							78.21
Kuykendall, J. O. (S)	Mill Creek, Okla.	National Stock Yards, Ill.	9	198,000	41	38	59.40
Lance & Charley	Scullin, Okla.	do.	5	110,000	41	38	33.00
Lebo & Dykes. (S)	Mill Creek, Okla.	do.	7	154,000	41	38	10.80
Lewis, J. M. (S)	Ryan, Okla.	do.	9	198,000	42½	39½	46.20
Lindsay & Witherspoon. (S)	Scullin, Okla.	do.	2	44,000	34	30½	59.40
Livingston & Baldrige. (S)	Henryetta, Okla.	Kansas City, Kans.	33	726,000	34½	30	14.30
McKenzie & Ferguson. (S)	Mill Creek, Okla.	National Stock Yards, Ill.	30	660,000	41	38	4.72
		do.					115.30
							64.68

Claims Against St. Louis & San Francisco Railroad Company, The Delivering Line In Each Shipment—Continued.

Consignor.	Origin.	Destination.	Car.	Weight.	Rate paid.	Rate ordered.	Amount of refund.	Interest.
Major, L. D. (S)	Ardmore, Okla.	National Stock Yards, Ill.	No.	Pounds.	Cents.	Cents.		
Do.	Ryan, Okla.	do.	25	550,000	41½	38	\$192.50	
			28	616,000	42½	39½	184.80	
			53	1,166,000			377.30	\$143.25
March Bros. (S)	Schulter, Okla.	do.	8	176,000	33	30	52.80	20.36
Martin, J. D. M. (S)	Comanche, Okla.	do.	10	220,000	41½	38	71.50	23.16
Martin, J. W. (C)	do.	do.	11	242,000	41½	38	78.65	25.73



Parkinson, Jas. & T. A. (S).	Beggs, Okla.	Kansas City, Kans.	1	22,000	21½	21	1.10	.47
Payne, W. L., & Son.	Mill Creek, Okla.	National Stock Yards, Ill.	35	770,000	41	38	231.00	
Do.	do.	Kansas City, Kans.	2	44,000	34	30¾	14.30	
			37	814,000			245.30	78.91
Peery, Tom. (S).	Cement, Okla.	do.	7	154,000	33½	29½	61.60	
Do.	Tuttle, Okla.	do.	4	88,000	31½	28	30.80	
			11	242,000			92.40	34.90
Penner, Felix. (S).	Mill Creek, Okla.	do.	6	132,000	34	30¾	42.90	
Do.	do.	National Stock Yards, Ill.	57	1,254,000	41	38	376.20	
			63	1,386,000			419.10	161.50
Perkins & Todd. (S).	Oklmulgee, Okla.	do.	17	374,000	31	29	74.80	24.18
Pickens, J. J.	Holdenville, Okla.	Kansas City, Kans.	1	22,000	31	28	6.60	2.13
Pierce & Kelley. (S).	Midlothian, Tex.	National Stock Yards, Ill.	6	132,000	42½	39½	39.60	13.93
			2	44,000	27½	24½	13.20	
Pincham & Kirtley. (S).	Weleetka, Okla.	Kansas City, Kans.	9	198,000	34½	30	94.05	
Do.	Henryetta, Okla.	National Stock Yards, Ill.	1	22,000	37½	34	8.25	
Do.	Wetumka, Okla.	do.	4	88,000	36½	32½	33.00	
Do.	Weleetka, Okla.	do.	16	352,000			148.50	56.10
Price, J. S. & H. (S).	Addington, Okla.	do.	8	176,000	41½	38	61.60	23.84

42	Rawley, Dan. (S).....	Okmulgee, Okla.....	9	198,000	31	29	39.60	14.25
	Rich, J. R. (S).....	Jackaboro, Tex.....	3	66,000	36½	33½	19.80	6.65
	Richards, W. L. (S).....	Ryan, Okla.....	7	154,000	42½	39½	46.20	15.03
	Roff, J. C., & Son. (C)...	Roff, Okla.....	14	308,000	41	38	92.40	36.11
	Russell & Hubbard. (S)...	Comanche, Okla.....	6	132,000	41¼	38	42.90	14.09
	Sacra, J. B. (S).....	Amber, Okla.....	2	44,000	32	29	13.20	4.26
	Scannell & Patterson. (S)...	Elk, Okla.....	10	220,000	39½	36½	66.00	26.44
	Scott, Edward. (C).....	Holdenville, Okla...	1	22,000	39	36	6.60	2.19
	Seay Bros. (C).....	Ryan, Okla.....	3	66,000	42½	39½	19.80	6.56
	Sellman, R. (S).....	Beggs, Okla.....	15	330,000	21½	21	16.50	
	Do.....	do.....	9	198,000	30¾	29	24.75	
			24	528,000			41.25	13.88
	Severs, F. B.....	Okmulgee, Okla.....	8	176,000	31	29	35.20	11.35
	Shaw, F. M. (S).....	Schulter, Okla.....	26	572,000	33	30	171.60	65.08
	Shaw & Jennings. (S)....	Comanche, Okla...	6	132,000	41¼	38	42.90	
	Do.....	Duncan, Okla.....	20	440,000	41¼	38	143.00	
			26	572,000			185.90	60.37

Consignor.	Origin.	Destination.	Car.	Weight.	Rate paid.	Rate or- dered.	Amount of refund.	Interest.
Stine, J. H. (S)	Amber, Okla.....	Kansas City, Kans.....	No. 54	Pounds. 1,188,000	Cents. 32	Cents. 29	\$356.40	
Do.....	Tuttle, Okla.....	do.....	14	308,000	31½	28	107.80	
			68	1,496,000	.....	.....	464.20	\$177.82
Slator, J. M., & Sons. (S)	Scullin, Okla.....	National Stock Yards, Ill...	45	990,000	41	38	297.00	95.49
Smith, B. P. (S).....	Tuttle, Okla.....	Kansas City, Kans.....	8	176,000	31½	28	61.60	27.01
Smith, T. J.....	do.....	do.....	7	154,000	31½	28	53.90	21.98
South & Johnson. (S).....	Ravia, Okla.....	National Stock Yards, Ill...	3	66,000	41½	38	23.10	7.46
South, P. W. (S).....	Mill Creek Okla.....	do.....	11	242,000	41	38	72.60	
Do.....	do.....	Kansas City, Kans.....	4	88,000	34	30¾	28.60	
			15	330,000	.....	.....	101.20	36.05
Spring, A. A., & Son. (S)...	Sugden, Okla.....	National Stock Yards, Ill...	4	88,000	42	39	26.40	10.43
Stewart, Cal.....	Scullin, Okla.....	do.....	5	110,000	41	38	33.00	14.58
Stroud, T. (S).....	do.....	do.....	17	374,000	41	38	112.20	36.38
Stubblefield, R. W.....	do.....	do.....	3	66,000	41	38	19.80	6.49
Sutherland, G. W. & Co. (S).	Beggs, Okla.....	do.....	10	220,000	30¾	29	27.50	
Do.....	Red Fork, Okla.....	do.....	14	308,000	30¾	27¾	92.40	

44	Taliaferro, D. B. (S).....	Madill, Okla.....	24	528,000	.....	.....	119.90	52.70
	Taylor, A. C. (S).....	Mill Creek, Okla.....	20	440,000	41½	38	154.00	51.00
	Templeton & Oliphant. (S).....	Holdenville, Okla.....	4	88,000	41	38	26.40	8.37
		Kansas City, Kans.....	3	66,000	31	28	19.80	8.51
	Thompson Bros. (S).....	Beggs, Okla.....	21	462,000	21½	21	23.10	
	Do.....	Henryetta, Okla.....	2	44,000	26	22½	15.40	
	Do.....	Beggs, Okla.....	35	770,000	30¾	29	96.25	
		National Stock Yards, Ill..						
			58	1,276,000	.....	.....	134.75	56.53
	Thompson & Gibson. (S).....	.....do.....	18	396,000	21½	21	19.80	
	Do.....	.....do.....	31	632,000	30¾	29	85.25	
		Kansas City, Kans.....						
		National Stock Yards, Ill..						
			49	1,078,000	.....	.....	105.05	33.60
	Thompson, U. S. (S).....	.....do.....	11	242,000	30¾	29	30.25	10.48
	Thompson, Wm. & R. B. (S).....	.....do.....	23	506,000	30¾	29	63.25	20.52
	Three Circle Ranch.....	Bluffdale, Tex.....	4	88,000	44½	41½	26.40	11.22
	Todd, J. S. (S).....	San Angelo, Tex.....	2	44,000	49	46	13.20	
	Do.....	Okmulgee, Okla.....	19	418,000	31	29	83.60	
			21	462,000	.....	.....	96.80	33.03
	Trout, N. T.....	Roff, Okla.....	2	44,000	34	30¾	14.30	4.65
	Vale, J. M. (C).....	Scullin, Okla.....	16	352,000	34	30¾	114.40	45.27
	Vincent, Frank.....	.....do.....	6	132,000	34	30¾	42.90	14.05
	Wagoner, W. T. (S).....	Bowie, Tex.....	6	132,000	42½	30¾	39.60	16.50
		National Stock Yards, Ill..						

Wall & Melish.....	Ravia, Okla.....	6	132,000	41½	38	46.20	25.07
Warren, O. G.....	Ardmore, Okla.....	8	176,000	41½	38	61.60	15.32
Washington & Davidson, (S)	Addington, Okla...	36	792,000	41½	38	277.20	121.05
Watson, Wm.....	Beggs, Okla.....	58	1,276,000	30½	29	159.50	
Do.....	do.....	11	242,000	21½	21	12.10	
	Kansas City, Kansas.....	69	1,518,000	.....	.....	171.60	57.53
Webb, Sidney. (S).....	Addington, Okla...	191	4,202,000	41½	38	1,470.70	
Do.....	Bowie, Tex.....	52	1,144,000	42½	39½	343.20	
Do.....	Ryan, Okla.....	10	220,000	42½	39½	66.00	
		253	5,566,000	.....	.....	1,879.90	677.07
Weleetka Cattle Co. (S)...	Weleetka, Okla.....	12	264,000	36¼	32½	99.00	41.58
Westheimer & Daube. (S)	Ardmore, Okla.....	3	66,000	41½	38	23.10	
Do.....	Mill Creek, Okla...	58	1,276,000	41	38	382.80	
Do.....	Tishomingo, Okla...	43	946,000	41	38	283.80	
		104	2,288,000	.....	.....	689.70	261.98
Whatley, W. W. (S).....	Honey Grove, Tex..	10	220,000	42½	39½	66.00	26.69
Wiggs & Woody. (S).....	Madill, Okla.....	5	110,000	35½	30¾	52.25	
Do.....	do.....	9	198,000	41½	38	69.30	
	National Stock Yards, Ill...	14	309,000	.....	.....	121.55	49.29

Willis, H.	Scullin, Okla.	4	88,000	41	38	26.40	8.53
Wilson, C. W. (S)	Schulter, Okla.	10	220,000	33	30	66.00	27.78
Wilson & Selfridge. (S)	do.	72	1,584,000	33	30	475.20	157.29
Winters, M. R. (S)	Tuskahoma, Okla.	3	66,000	36	35	6.60	2.57
Wise & Autrey. (S)	Holdenville, Okla.	19	418,000	31	28	125.40	
Do.	Weleetka, Okla.	5	110,000	27½	24½	33.00	
		24	528,000			158.40	63.28

Claims Against St. Louis & San Francisco Railroad Company, The Delivering Line In Each Shipment—Continued.

Consignor.	Origin.	Destination.	Car.	Weight.	Rate paid.	Rate or- dered.	Amount of refund.	Interest.
Witherspoon, J. F. (S)	Scullin, Okla.	Kansas City, Kans	No. 36	Pounds. 792,000	Cents. 34	30¾	\$257.40	
Do.	Mill Creek, Okla.	do.	6	132,000	34	30¾	42.90	
Do.	Scullin, Okla.	National Stock Yards, Ill.	22	484,000	41	38	145.20	
			64	1,408,000			445.50	\$169.07
Woods Lee. (S)	do.	do.	38	836,000	41	38	250.80	
Do.	Kingston, Okla.	do.	5	110,000	41	38	33.00	
			43	946,000			283.80	113.42
Woods, W. B.	Stuart, Okla.	do.	3	66,000	39	36	19.80	6.50

Wynne, J. A. ....	Scullin, Okla. ....	7	154,000	41	38	40.20	14.89
Yahola Farm & Stock Co. ....	Beggs, Okla. ....	5	110,000	30½	29	13.75	4.44
Young, G. W. (S) .....	Mill Creek, Okla. ....	6	132,000	41	38	39.60	12.93

Claim Against Texas & Pacific Railway Company, The Delivering Line.

Saunders, T. B. (S) .....	Fort Worth, Tex. ....	35	770,000	42½	39½	\$231.00	\$97.94
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[fol. 48] EXHIBIT "B" TO INTERVENING PETITION OF E. B. SPILLER

(Judgment)

No. 4308

E. B. SPILLER, Plaintiff,

VS.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, MISSOURI Pacific Railway Company, St. Louis & San Francisco Railroad Company Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Chicago & Alton Railroad Company, St. Louis. Iron Mountain & Southern Railway Company, Chicago & Eastern Illinois Railroad Company, and Illinois Central Railroad Company, Defendants.

Now on this day this cause coming on regularly to be heard and considered, all of the parties plaintiff and defendants, by their respective attorneys, having heretofore appeared and having by written stipulation herein waived a jury and submitted this cause to the Court, and all of the evidence having been heretofore introduced, seen and heard by the Court and briefs of counsel having been submitted, seen and read by the Court and oral arguments of counsel having been duly heard by the Court, the Court now being fully advised in the premises, finds all of the issues made by the pleadings both of law and fact in favor of the plaintiff and finds the facts to be as stated in the first count of plaintiff's petition herein.

It is further ordered, adjudged and decreed by the Court that Plaintiff E. B. Spiller do have and recover of and from the defendant, St. Louis & San Francisco Railroad Company the sum of Twenty-seven Thousand Six Hundred Eighty-two and 75/100 Dollars (\$27,682.75) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the plaintiff E. B. Spiller by the said St. Louis & San Francisco Railroad Company on or before June 15, 1914, and do have and recover of and from said defendant the further sum of Two Thousand Five

Hundred Twenty-nine and 56/100 Dollars (\$2,529.56) being the interest at six per cent per annum on said sum of \$27,-682.75 from June 15, 1914 to Aug. 1, 1916, being a total sum of Thirty Thousand Two Hundred Twelve and 31/100 Dollars (\$30,212.31) together with interest thereon from Aug. 1, 1916 at six per cent per annum until paid; and that plaintiff have and recover of and from said St. Louis & San Francisco Railroad Company the further sum of Three Thousand Twenty-one and 23/100 Dollars (\$3,021.23) as at-[fol. 49] torneys' fees for prosecuting this action, which sum the court finds to be reasonable, which attorneys' fees shall be taxed as costs herein; and that the plaintiff also have and recover of said St. Louis & San Francisco Railroad Company his costs herein laid out and expended, for all of which let execution issue.

Arba S. Vanvalkenburg, Judge.

Aug. 16, 1916.

UNITED STATES OF AMERICA, sct:

I, John B. Warner, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a true copy of the judgment entry of August 16, 1916, in the cause therein named, as fully as the same appears in my office.

Witness my hand as clerk, and the seal of said Court. Done at office in Kansas City, Missouri, this 26th day of August, A. D. 1916.

John B. Warner, Clerk. (Seal.)

## EX. C TO INTERVENING PETITION OF E. B. SPILLER

4308

United States Circuit Court of Appeals, September Term,  
1917

No. 4824

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Plaintiff in  
Error,

vs.

E. B. SPILLER

Mandate.—Filed Mar. 27, 1918. John B. Warner, Clerk.  
C. J. Murray, D. C.United States of America to the Honorable the Judges of  
the District Court of the United States for the  
(Seal.) Western District of Missouri, Greeting:

Whereas, lately in the District Court of the United States for the Western District of Missouri, before you, or some [fol. 50] of you, in a cause between E. B. Spiller, plaintiff, and The Missouri, Kansas & Texas Railway Company, Missouri Pacific Railway Company, St. Louis & San Francisco Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Chicago & Alton Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Chicago & Eastern Illinois Railroad Company, and Illinois Central Railroad Company, defendants, wherein the judgment of the said District Court in said cause, entered on the 16th day of August, A. D. one thousand nine hundred and sixteen was in the following words, viz:

(A copy of the judgment is set out in full in the mandate issued in the case of the Atchison, Topeka & Santa Fe Railway Company, Plaintiff in Error vs. E. B. Spiller No. 4819.)

as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals, Eighth Circuit, by virtue of a writ of error prayed by and allowed to the defendant, St. Louis & San Francisco Railroad Company, agreeably

to the Act of Congress in such case made and provided, fully and at large appears:

And whereas at the September term, in the year of our Lord one thousand nine hundred and seventeen, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the transcript of record from the said District Court, and was argued by counsel.

In consideration whereof, it is now here ordered and adjudged by this court, that so much of the judgment of said District Court in this cause, from which this writ is prosecuted, be and the same is hereby, reversed with costs; and that the St. Louis & San Francisco Railroad Company have and recover against E. B. Spiller the sum of Thirty-three and 70/100 Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court, with directions to grant a new trial.

October 29, 1917.

And thereafter on March 11, 1918, an order was entered in said Circuit Court of Appeals on the petition for a rehearing filed by counsel for defendant in error in said causes Nos. 4819 to 4827, which said order is set out in the [fol. 51] mandate issued in case No. 4819, *The Atchison, Topeka & Santa Fe Railway Company vs. E. B. Spiller*.

You, therefore, are hereby commanded that such execution and further proceedings [he] had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 26th day of March in the year of our Lord one thousand nine hundred and eighteen.

E. E. Koch, Clerk of the United States Circuit Court of Appeals, Eighth Circuit.

Costs of plaintiff in error: Clerk, 13.70; printing record, printed with No. 4819; attorney, 20.00; attorney, 33.70.

EX. D TO INTERVENING PETITION OF E. B. SPILLER

No. 4308. File No. 26598

Supreme Court of the United States, October Term, 1919

No. 142

E. B. SPILLER

VS.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY

Mandate—Filed June 6, 1920. Edwin R. Durham, Clerk,  
by C. J. Murray, Deputy

UNITED STATES OF AMERICA, SS:

The President of the United States of America to the  
Honorable the Judge of the District Court of the  
(Seal.) United States for the Western District of Mis-  
souri, Greeting:

Whereas lately in the United States Circuit Court of  
Appeals for the Eighth Circuit, in a cause between St.  
[fol. 52] Louis & San Francisco Railroad Company, plain-  
tiff in error and E. B. Spiller, defendant in error, No. 4824,  
wherein the judgment of the said Circuit Court of Appeals,  
entered in said cause on the 29th day of October, A. D. 1917,  
is in the following words, viz:

“This cause came on to be heard on the transcript of the  
record from the District Court of the United States for the  
Western District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered and  
adjudged by this court, that so much of the judgment of  
said District Court, in this cause, from which this writ of  
error is prosecuted, be, and the same is hereby, reversed  
with costs; and that the St. Louis & San Francisco Rail-  
road Company have and recover against E. B. Spiller the  
sum of Thirty-three Thousand and 70/100 dollars, for its  
costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is  
hereby, remanded to the said District Court with directions  
to grant a new trial.”

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals, which was brought into the Supreme Court of the United States by virtue of a writ of certiorari agreeably to the act of Congress, in such case made and provided, fully and at large appears;

And whereas, in the present term of October in the year of Our Lord nineteen hundred and nineteen, the said cause came on to be heard before the Supreme Court, on the said transcript of record, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said United States Circuit Court of Appeals in this cause be, and the same is hereby reversed with costs, and that the judgment of the District Court of the United States for the Western District of Missouri in this cause be, and the same is hereby affirmed with costs; and that the said defendant in error, E. B. Spiller, recover against the said plaintiff in error for his costs herein expended and have execution therefor.

And it is further ordered, that this cause be, and the same is hereby remanded to the said District Court. May 17, 1920.

You therefore are hereby commanded that such execution and proceedings be had in said cause, as according to right [fol. 53] and justice, and the laws of the United States, ought to be had, the said writ of certiorari notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 2nd day of July in the year of our Lord Nineteen Twenty.

James D. Maher, Clerk of the Supreme Court of the United States.

Costs of defendant in error: Clerk, printing record, attorney paid by plaintiff in error.

## EXHIBIT "E" TO INTERVENING PETITION OF E. B. SPILLER

No. 4308

E. B. SPILLER

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, MISSOURI Pacific Railway Company, St. Louis & San Francisco Railroad Company, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Chicago & Alton Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Chicago & Eastern Illinois Railroad Company, and Illinois Central Railroad Company, Defendants.

## ORDER SUSTAINING MOTION OF PLAINTIFF TO TAX ATTORNEYS' FEES

Now on this day this cause coming on further to be heard and considered upon the motion of plaintiff for an order of court taxing an additional attorneys fee for the services of petitioner's attorneys in the United States Circuit Court of Appeals and in the United States Supreme Court, and it appearing that the mandates of the Supreme Court of the United States having been received and filed in this court, directing the reversal of the judgment of the United States Circuit Court of Appeals and the affirmance of the judgment of this court heretofore rendered herein, comes the plaintiff by his attorneys, and names defendant, Missouri, Kansas & Texas Railway Company, by J. W. Jamison, its attorney, and come the Missouri Pacific Railway Company and the St. Louis, Iron Mountain & Southern Railway Company, [fol. 54] by Thomas J. Hackney, their attorney, and come the St. Louis & San Francisco Railroad Company and the Chicago & Eastern Illinois Railroad Company, by H. S. Conrad, of Guthrie, Conrad & Durham, their attorneys, comes the Chicago, Rock Island & Pacific Railway Company, by Frank P. Sebree, its attorney, and comes Chicago & Alton Railroad Company, by Charles M. Miller, its attorney, and come the Atchison, Topeka & Santa Fe Railway Company and the Illinois Central Railroad Company, by T. J. Norton and Cyrus Crane, their attorneys, and it appearing

that all of the said defendants have received due notice for the taking up of said motion at this time and all of them appearing in court by their respective attorneys as aforesaid, said motion is taken up and the evidence and record in the case and arguments of counsel upon said motion being seen, heard and fully considered by the court, the court finds that the said motion should be sustained, and the court further finds that a reasonable attorneys' fee for the plaintiffs attorneys for their services in this court and also in the United States Circuit Court of Appeals for the Eighth Circuit and in the United States Supreme Court herein, is Twenty-five thousand Dollars (\$25,000.00) and that in addition to the amount of attorneys' fees heretofore allowed by this court in this case, there should be allowed to the plaintiff such additional sum as to make the entire fee \$25,000.00.

Wherefore, it is considered, ordered and adjudged by the court, that the motion of plaintiff for the allowance of additional attorneys' fees is hereby sustained and that plaintiff have and recover of and from the defendants the amount of ten per cent heretofore allowed by this court on the amount of the judgment and interest at the time of entering said judgment, and in addition thereto the further sum of \$8,528.13, making a total of \$25,000.00 to be allowed and taxed as part of the costs in this case for plaintiff's attorneys' fees, said additional sum to be apportioned among the several defendants in accordance with the amount of the judgments heretofore rendered against said several defendants: That is to say, plaintiff shall have and recover of and from the Atchison, Topeka & Santa Fe Railway Company the sum of \$4,317.42 heretofore allowed as attorneys' fees and now allowed as attorneys' fees for services of plaintiff's attorneys in District Court for the Western Division of the Western District of Missouri in this case, and in addition thereto that plaintiff have and recover of and from the said Atchison, Topeka & Santa Fe Railway Company the further sum of \$2,235.12 as attorneys' fees for services of plaintiff's attorneys in the United States Court [fol. 55] of Appeals and United States Supreme Court, all of which said attorneys' fees shall be taxed up as part of the costs in this case.

Plaintiff shall have and recover of and from the Chicago & Eastern Illinois Railroad Company the sum of \$206.34,

heretofore allowed as attorneys' fees and now allowed as attorneys' fees for services of plaintiff's attorneys in the District Court for the Western Division of the Western District of Missouri, in this case, and in addition thereto that plaintiff have and recover of and from the said Chicago & Eastern Illinois Railroad Company the further sum of \$106.82 as attorneys's fees, for services of plaintiff's attorneys in the United States Circuit Court of Appeals and the United States Supreme Court, all of which said attorneys' fees shall be taxed up as part of the costs in this case.

Plaintiff shall have and recover of and from the Chicago & Alton Railroad Company the sum of \$85.97 heretofore allowed as attorneys' fees and now allowed as attorneys' fees for services of plaintiff's attorneys in the District Court of the Western Division of the Western District of Missouri, in this case, and in addition thereto that plaintiff have and recover of and from the said Chicago & Alton Railroad Company the further sum of \$44.50 as attorneys' fees for services of plaintiff's attorneys in the United States Circuit Court of Appeals and in the United States Supreme Court, and all of which said attorneys' fees shall be taxed up as part of the costs in this case.

Plaintiff shall recover of and from the Missouri Pacific Railway Company the sum of \$35.05 heretofore allowed as attorneys' fees and now allowed as attorneys' fees for services of plaintiff's attorneys in the District Court of the Western Division of the Western District of Missouri, in this case, and in addition thereto that plaintiff have and recover of and from the Missouri Pacific Railway Company the further sum of \$18.15 as attorneys' fees for services of plaintiff's attorneys in the United States Circuit Court of Appeals and the United States Supreme Court, and all of which said attorneys' fees shall be taxed up as part of the costs in this case.

Plaintiff shall have and recover of and from the St. Louis, Iron Mountain & Southern Railway Company, the sum of \$416.59 heretofore allowed as attorneys' fees and now allowed as attorneys' fees for services of plaintiff's attorneys in the District Court of the Western Division of the Western District of Missouri, in this case, and in addition thereto that plaintiff have and recover

of and from the said St. Louis, Iron Mountain & Southern Railway Company the further sum of \$15.67 as attorneys' fees for services of plaintiff's attorneys in the United States Circuit Court of Appeals and the United States Supreme Court, and all of which said attorneys' fees shall be taxed up as part of the costs in this case.

Plaintiff shall have and recover of and from the St. Louis & San Francisco Railroad Company the sum of \$3,021.23 heretofore allowed as attorneys' fees for services of plaintiff's attorneys in the District Court of the Western Division of the Western District of Missouri, in this case, and in addition thereto that the plaintiff shall have and recover of and from the said St. Louis & San Francisco Railroad Company the further sum of \$1,564.09 as attorneys' fees for services of plaintiff's attorneys in the United States Circuit Court of Appeals and the United States Supreme Court, and all of which said attorneys' fees shall be taxed up as part of the costs in this case.

Plaintiff shall have and recover of and from the Chicago, Rock Island & Pacific Railway Company the sum of \$2,034.60 heretofore allowed as attorneys' fees and now allowed as attorneys' fees for services of plaintiff's attorneys in the District Court of the Western Division of the Western District of Missouri, in this case, and in addition thereto that the plaintiff have and recover of and from the said Chicago, Rock Island & Pacific Railway Company the further sum of \$1,053.00 as attorneys' fees for services of the plaintiff's attorneys in the United States Circuit Court of Appeals and in the Supreme Court, and all of which said attorneys' fees shall be taxed up as part of the costs in this case.

Plaintiff shall have and recover of and from the Illinois Central Railroad Company the sum of \$178.84 heretofore allowed as attorneys' fees and now allowed as attorneys' fees for services of plaintiff's attorneys in the District Court of the Western Division of the Western District of Missouri, in this case, and in addition thereto that plaintiff have and recover of and from said Illinois Central Railroad Company the further sum of \$92.58 as attorneys' fees for services of plaintiff's attorneys in the United States Circuit Court of Appeals and the United States

Supreme Court, and all of which said attorneys' fees shall be taxed up as part of the costs in this case.

Plaintiff shall have and recover of and from the Missouri, Kansas & Texas Railway Company the sum of [fol. 57] \$6,176.43 heretofore allowed as attorneys' fees and now allowed as attorneys' fees for services of plaintiff's attorneys in the District Court of the Western Division of the Western District of Missouri, in this case, and in addition thereto that the plaintiff have and recover of and from said Missouri, Kansas & Texas Railway Company the further sum of \$3,197.53 as attorneys' fees for services of plaintiff's attorneys in the United States Circuit Court of Appeals and the United States Supreme Court, and all of which said attorneys' fees shall be taxed up as part of the costs in this case.

(Signed) Arba S. Van Falkenburg, Judge.

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#### IN UNITED STATES DISTRICT COURT

#### ORDER GRANTING LEAVE TO FILE INTERVENING PETITION OF E. B. SPILLER ET AL.—February 12, 1921

Upon consideration of the application of E. B. Spiller, et al., for leave to file their intervening petition herein, which was verified December 2, 1920, and of the arguments of counsel for the respective parties upon the hearing of this application—

It is hereby ordered that the application be granted; that the applicants have leave to file their petition; that the St. Louis and San Francisco Railway Company answer the petition or take such other action against it as it may be advised within twenty days after the service of this order upon its attorneys, and that the issues raised by the intervention, be and they are hereby referred to the Special Master for hearing, consideration and report of the facts and his conclusions.

(Signed) Walter H. Sanborn, Senior Circuit Judge.

## IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION ON APPLICATION GRANTING LEAVE TO  
FILE INTERVENING PETITION—Filed February 12, 1921

SANBORN, Circuit Judge:

In view of the opinion in *Love vs. North American Company*, 229 Fed. 123 and of the averments of the applicants, that on account of the necessity of first establishing their claims by the findings and orders of the Interstate Commerce Commission they could not have enforced them in the foreclosure proceedings at any time before February 1, 1916, the limit of the time fixed for presenting claims by the orders in those proceedings, that they have been diligently establishing these claims by necessary litigation before the Interstate Commerce Commission, the District Court and the Supreme Court, and that they notified the attorneys for the purchasers at the foreclosure sale before they paid for the purchase of their claims and their intention to press them, the court is not persuaded that they are barred in this court of equity from a presentation and consideration of their claims either by the orders limiting the time within which claims were to be presented in the foreclosure proceedings or by the inexcusable laches of the applicants.

## IN UNITED STATES DISTRICT COURT

## Consolidated Cause—Final

[Title omitted]

INTERVENING PETITION OF E. B. SPILLER, BAILEY & TOWNSEND, BAKER & BROWN, W. M. BARRINGER, BATTLES & DENTON, G. W. BATTLES, F. N. BELSHE, BOEDECKER & BALL, T. J. BROWN, CAIN & KELLEY, THOMAS CHISM, TOM DURANT, S. H. ELLIOTT, R. M. EVANS, C. J. FOGLEMAN, R. L. HALL, J. R. HAMILTON, HAYNES & HOKENKAMP, HENSLEY & BRUMIT, HODGES & PAYNE, C. W. JACKSON, R. H. JACKSON, JAMES & CARDIN, JAMES & JAMISON, J. E. KELLEY, KIMBLE & CO., KING BROS., LANCE & CHARLEY, MURRELL & CLARY, W. L. PAYNE & SON, J. J. PICKENS, F. B. SEVER, T. J. SMITH, CAL STEWART, R. W. STUBBLEFIELD, THREE CIRCLE RANCH, N. T. TROUT, FRANK VINCENT, WALL & MCFISH, O. G. WARREN, H. WILLIS, W. D. WOODS, J. A. WYNNE, YOHOKO FARM & STOCK Co.—Filed [fol. 59] Dec. 2, 1920

Come now E. B. Spiller, Baley & Townsend, Baker & Brown, W. M. Barringer, Battles & Denton, C. W. Battles, F. N. Belshe, Boedecker & Ball, T. J. Brown, Cain & Kelley, Thomas Chism, Tom Durant, S. H. Elliott, R. M. Evans, C. J. Fogleman, R. L. Hall, J. R. Hamilton, Haynes & Hogenkamp, Hensley & Brumit, Hodges & Payne, G. W. Jackson, R. H. Jackson, James & Cardin, James & Jamison, J. E. Kelley, Kimble & Co., King Bros., Lance & Charley, Murrell & Clary, W. L. Payne & Son, J. J. Pickens, F. B. Severs, T. J. Smith, Cal Stewart, R. W. Stubblefield, Three Circle Ranch, N. T. Trout, Frank Vincent, Wall & McFish, O. G. Warren, H. Willis, W. D. Woods, J. A. Wynne, and Yohoka Farm & Stock Company, and complaining of the said plaintiffs and of the said defendants and of the St. Louis & San Francisco Railway Company, and of the receivers in said causes, and pursuant to the final decree entered in the above entitled cause, at the City of St. Louis, on the 31st day of March, 1916, represent and show to the court as follows:

1. That defendant St. Louis & San Francisco Railroad Company was at all times mentioned herein a common carrier engaged in the transportation of cattle in connection with other lines of railway, from points in Texas, Oklahoma and New Mexico, to Kansas City, St. Joseph and St. Louis, Missouri, National Stock Yards and Chicago, Illinois, New Orleans, Louisiana, and other live stock markets, and was a party to the tariffs, rates, fares and charges, constituting joint rates and through rates from the point named in Appendix A to the order of the Interstate Commerce Commission hereinafter referred to and made a part hereof as an exhibit to this intervening petition, at the rates of shipment shown in Appendix A.

[fol. 60] 2. That on the 12th day of January, 1914, the Interstate Commerce Commission, after full hearing and in all things proceeding legally in the cause then pending before it, No. 732, entitled Cattle Raisers Association of Texas, et al. v. Missouri, Kansas & Texas Railway Company, et al., to which the defendant, St. Louis & San Francisco Railroad Company was a party, made its lawful order directing the defendant, St. Louis & San Francisco Railroad Company and such other carriers named in said order to pay to the shippers therein named damages on account of charging the shippers named as consignors in said report and order unjust and unreasonable rates on shipments of cattle shown in said Appendix A, in the amounts therein named, said report and order of the Commission being unreported opinion No. A 583, hereto attached and made a part hereof as Exhibit A, in which the unreasonable rates paid, the rates established by the commission, the shipments made for which the unreasonable rates were paid, the amount of principal and interest as damages which the defendant St. Louis & San Francisco Railroad Company and other carriers were directed severally to pay to the said shippers, are fully set out in connection with the findings in said supplemental report and order of said Interstate Commerce Commission, and in which amounts the shippers named as consignors as therein shown were damaged by the defendant, the St. Louis & San Francisco Railroad Company and said other carriers, respectively, as found by the said Commission, and which other intervening petitioners

and E. B. Spiller as assignee are entitled to recover of the defendant St. Louis & San Francisco Railroad Company, as follows:

Baily & Townsend:

Principal .....	\$22.00
Interest .....	8.60
Int. from 6-15-14 .....	3.90
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Total .....	34.50
Attorney's fee .....	3.45

Baker & Brown:

Principal .....	13.20
Interest .....	4.26
Int. from 6-15-14 .....	2.22
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Total .....	19.63
Attorney's fee .....	1.96

W. M. Barringer:

Principal .....	13.20
Interest .....	4.48
Int. from 6-15-14 .....	2.25
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[fol. 61] Total .....	19.63
Attorney's fee .....	1.99

Battles & Denton:

Principal .....	125.40
Interest .....	39.97
Int. from 6-15-14 .....	21.08
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Total .....	186.45
Attorney's fee .....	18.64

## G. W. Battles:

Principal .....	33.00
Interest .....	12.85
Int. from 6-15-14 .....	5.88
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Total .....	51.69
Attorney's fee .....	5.16

## F. N. Belshe:

Principal .....	15.40
Interest .....	5.05
Int. from 6-15-14 .....	2.60
<hr/>	
Total .....	23.05
Attorney's fee .....	2.30

## Boedecker &amp; Ball:

Principal .....	19.80
Interest .....	8.06
Int. from 6-15-14 .....	3.55
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Total .....	31.41
Attorney's fee .....	3.14

## T. J. Brown:

Principal .....	8.25
Interest .....	3.15
Int. from 6-15-14 .....	1.45
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Total .....	12.85
Attorney's fee .....	1.28

## Cain &amp; Kelley:

Principal .....	48.95
Interest .....	16.92
Int. from 6-15-14 .....	8.33
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Total .....	74.24
Attorney's fee .....	7.42

## Thomas Chism:

Principal .....	19 25
Interest .....	7 48
Int. from 6-15-14 .....	3 41
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Total .....	30 14
Attorney's fee .....	3 01

## [fol. 62] Tom Durant:

Principal .....	22 00
Interest .....	9 65
Int. from 6-15-14 .....	4 03
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Total .....	35 65
Attorney's fee .....	3 56

## S. H. Elliott:

Principal .....	46 20
Interest .....	19 32
Int. from 6-15-14 .....	8 33
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Total .....	73 85
Attorney's fee .....	7 38

## R. M. Evans:

Principal .....	19 80
Interest .....	6 34
Int. from 6-15-14 .....	3 31
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Total .....	29 45
Attorney's fee .....	2 94

## C. J. Fogleman:

Principal .....	19 80
Interest .....	6 67
Int. from 6-15-14 .....	3 37
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Total .....	29 84
Attorney's fee .....	2 98

## R. L. Hall:

Principal .....	19.80
Interest .....	6.38
Int. from 6-15-14 .....	3.33
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Total .....	29.51
Attorney's fee .....	2.95

## J. R. Hamilton:

Principal .....	19.80
Interest .....	6.63
Int. from 6-15-14 .....	3.50
	<hr/>
Total .....	29.93
Attorney's fee .....	2.99

## Haynes &amp; Hogenkamp:

Principal .....	26.40
Interest .....	10.58
Int. from 6-15-14 .....	4.71
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Total .....	41.69
Attorney's fee .....	4.16

## Hensley &amp; Brumit:

Principal .....	69.30
Interest .....	22.61
Int. from 6-15-14 .....	11.71
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[fol. 63] Total .....	103.62
Attorney's fee .....	10.36

## Hodges &amp; Payne:

Principal .....	178 20
Interest .....	57 35
Int. from 6-15-14 .....	29 99
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Total .....	265 34
Attorney's fee .....	26 53

## G. W. Jackson:

Principal .....	6 60
Interest .....	2 89
Int. from 6-15-14 .....	1 20
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Total .....	10 69
Attorney's fee .....	1 06

## R. N. Jackson:

Principal .....	46 20
Interest .....	15 18
Int. from 6-15-14 .....	7 82
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Total .....	69 20
Attorney's fee .....	6 92

## James &amp; Cardin:

Principal .....	13 20
Interest .....	4 31
Int. from 6-15-14 .....	2 22
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Total .....	19 73
Attorney's fee .....	1 97

## James &amp; Jamison:

Principal .....	99 00
Interest .....	32 07
Int. from 6-15-14 .....	16 71
<hr/>	
Total .....	147 78
Attorney's fee .....	14 77

## J. E. Kelley:

Principal .....	9.90
Interest .....	4.17
Int. from 6-15-14 .....	1.79
	<hr/>
Total .....	15.86
Attorney's fee .....	1.58

## Kimble &amp; Co.:

Principal .....	3.30
Interest .....	1.29
Int. from 6-15-14 .....	.58
	<hr/>
Total .....	5.17
Attorney's fee .....	.51

## [fol. 64] King Bros.:

Principal .....	6.60
Interest .....	2.02
Int. from 6-15-14 .....	1.09
	<hr/>
Total .....	9.71
Attorney's fee .....	.07

## Lance &amp; Charley:

Principal .....	33.00
Interest .....	10.80
Int. from 6-15-14 .....	5.58
	<hr/>
Total .....	49.38
Attorney's fee .....	4.93

## Murrell &amp; Clary:

Principal .....	21.45
Interest .....	9.29
Int. from 6-15-14 .....	3.92
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Total .....	34.66
Attorney's fee .....	3.46

## W. L. Payne &amp; Son:

Principal .....	245 30
Interest .....	78 91
Int. from 6-15-14 .....	41 33
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Total .....	365 54
Attorney's fee .....	36 55

## J. J. Pickens:

Principal .....	6 60
Interest .....	2 13
Int. from 6-15-14 .....	1 11
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Total .....	9 84
Attorney's fee .....	98

## F. B. Severs:

Principal .....	35 20
Interest .....	11 35
Int. from 6-15-14 .....	5 92
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Total .....	52 47
Attorney's fee .....	5 24

## T. J. Smith:

Principal .....	53 90
Interest .....	21 98
Int. from 6-15-14 .....	9 67
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Total .....	85 55
Attorney's fee .....	8 88

## Cal Stewart:

Principal .....	33 00
Interest .....	14 58
Int. from 6-15-14 .....	6 16
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[fol. 65] Total .....	53 74
Attorney's fee .....	5 37

## R. W. Stubblefield:

Principal .....	19 80
Interest .....	6 49
Int. from 6-15-14 .....	3 35
	<hr/>
Total .....	29 64
Attorney's fee .....	2 96

## Three Circle Ranch:

Principal .....	26 40
Interest .....	11 22
Int. from 6-15-14 .....	4 79
	<hr/>
Total .....	42 41
Attorney's fee .....	4 24

## X. T. Trout:

Principal .....	14 30
Interest .....	4 65
Int. from 6-15-14 .....	2 41
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Total .....	21 36
Attorney's fee .....	2 13

## Frank Vincent:

Principal .....	42 90
Interest .....	14 05
Int. from 6-15-14 .....	7 26
	<hr/>
Total .....	64 21
Attorney's fee .....	6 42

## Wall &amp; McFish:

Principal .....	46 20
Interest .....	15 32
Int. from 6-15-14 .....	8 15
	<hr/>
Total .....	69 67
Attorney's fee .....	6 96

## O. G. Warren:

Principal .....	61 60
Interest .....	25 07
Int. from 6-15-14 .....	11 06
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Total .....	97 73
Attorney's fee .....	9 77

## H. Willis:

Principal .....	26 40
Interest .....	8 53
Int. from 6-15-14 .....	4 45
<hr/>	
Total .....	39 38
Attorney's fee .....	3 93

## [fol. 66] W. D. Woods:

Principal .....	19 80
Interest .....	6 50
Int. from 6-15-14 .....	3 35
<hr/>	
Total .....	29 65
Attorney's fee .....	2 96

## J. A. Wynne:

Principal .....	46 20
Interest .....	14 89
Int. from 6-15-14 .....	7 78
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Total .....	68 87
Attorney's fee .....	6 88

## Yohoko Farm &amp; Stock Co.:

Principal .....	13 75
Interest .....	4 40
Int. from 6-15-14 .....	2 30
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Total .....	20 45
Attorney's fee .....	2 04

E. B. Spiller as assignee of the following shippers named in said report Appendix A, said assignments having been made to said Spiller after said report and order of said Commission was made, namely:

Brown & Biggerstaff:

Principal .....	30 25
Interest .....	11 84
Int. from 6-15-14 .....	5 36
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Total .....	47 45
Attorney's fee .....	4 74

T. L. Burnett:

Principal .....	84 70
Interest .....	30 48
Int. from 6-15-14 .....	14 68
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Total .....	129 86
Attorney's fee .....	12 98

P. R. Clark:

Principal .....	13 20
Interest .....	4 20
Int. from 6-15-14 .....	2 20
<hr/>	
Total .....	19 60
Attorney's fee .....	1 96

Mrs. H. M. King:

Principal .....	447 70
Interest .....	144 27
Int. from 6-15-14 .....	75 47
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Total .....	557 44
Attorney's fee .....	66 74

[fol. 67] Wm. Watson:

Principal .....	171 60
Interest .....	57 58
Int. from 6-15-14 .....	29 21
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Total .....	258 39
Attorney's fee .....	25 83

being a total for which said E. B. Spiller as assignee of said shippers, namely, Brown & Biggerstaff, T. L. Burnett, P. R. Clark, Mrs. H. M. King and William Watson is entitled to recover of said St. Louis & San Francisco Railroad Company of \$995.82, the amount of principal and interest ordered by the Interstate Commerce Commission to be paid by St. Louis & San Francisco Railroad Company to said shippers and assignors on or before June 15, 1914, and the further sum of \$126.99, being the interest at six per cent per annum on said sum of \$995.82 from June 15, 1914 to August 1, 1916, being a total of \$1,112.81 together with interest thereon from August 1, 1916 at six per cent per annum until paid and the further sum of \$111.28 as attorney's fees, taxed as costs, and other costs.

3. That the damages so claimed grew out of the fact that in the year 1903 the defendant St. Louis & San Francisco Railroad Company and other railway companies defendants in said cause No. 732, and their connecting carriers, being engaged in the business of transporting cattle and other freight from said points of origin mentioned in said Appendix A, to the markets of destination as shown in said Appendix A, on or about March, 1903, advanced the rates for transporting cattle from said points of origin stated in said Appendix A and from other points, to Kansas City, St. Joseph and St. Louis, Missouri, National Stock Yards and Chicago, Illinois, New Orleans, Louisiana, and other points, the amount of the advancements applicable to shipments therein specified being the difference between the rates shown in the column of Appendix A marked "Rate paid" and the column marked "Rate ordered" which rate paid named in said Appendix A the shippers named as consignors in said list were compelled to pay to the defendant,

St. Louis & San Francisco Railroad Company, on the shipments which they, respectively, made as therein shown, which advanced rates were found by the said Interstate Commerce Commission to be unjust and unreasonable and on account of the payment of which on the said shipments said St. Louis & San Francisco Railroad Company was ordered and directed to pay the said principal sum and interest to the intervening petitioner as assignee of said [fol. 68] shippers named as consignors, as shown in said report and order of the Commission, said Exhibit A hereto.

4. That after said rates were advanced and on February 10, 1904, the Cattle Raisers Association of Texas, a voluntary organization of live stock producers and shippers of Texas, Oklahoma and New Mexico, brought its complaint before the Interstate Commerce Commission against the said carrier and other carriers and their connecting lines of railway which had established said rates, alleging that said advanced rates were unjust and unreasonable, and the Commission, after full hearing of said complaint, in accordance with the Act to regulate commerce on August 16, 1905, by its report and opinion in cause No. 732, Cattle Raisers Association of Texas, et al. vs. Missouri, Kansas & Texas Railway Company, et al. reported in 11 I. C. C. 298, found it to be a fact that said advanced rates were unjust and unreasonable and in violation of Section 1 of the Act to regulate commerce, and therefore unlawful as shown by the report of the Commission in said cause last above referred to, which report and opinion as published by the Interstate Commerce Commission is hereby referred to, and this intervenor asks that it be considered a part hereof. That said advanced rates, notwithstanding the said decision of the Commission, remained in effect until November 17, 1908. That while the Commission found as shown in its said report and opinion, that the said rates on cattle were advanced as aforesaid, and the advances thereof were unjust and unreasonable, no formal order was made by the Commission consequent upon its said report and opinion, because the complainant in that case, the Cattle Raisers Association, upon the promulgation of that report and opinion, made application to the Commission for more specific findings of fact, which application had not been decided or dis-

posed of, but held under advisement by the Commission until the Act to Regulate Commerce was amended by what is known as the Hepburn Law, effective August 28, 1906, and which application for more specific findings of fact was still pending before the Commission on August 29, 1906.

5. That on August 29, 1906, the said complainant, the Cattle Raisers Association of Texas, in behalf of itself and its members and others similarly situated, who were engaged in the business of raising, buying and shipping cattle from the States of Texas, Oklahoma, New Mexico and Colorado, over said lines of railway, to the markets shown as points of destination in said Appendix A hereinbefore referred to, [fol. 69] filed its petition with the Interstate Commerce Commission reaffirming its previous allegations of its petition filed with the Commission February 1, 1904, charging that the rates on cattle from the points hereinbefore mentioned to the destinations mentioned, and the advances in said rates, and the rates as aforesaid were unjust and unreasonable, and praying that the Commission should proceed with such further hearing as it might deem necessary with respect to the allegations that said rates were unjust and unreasonable, and for an order of the Interstate Commerce Commission prescribing the just and reasonable rates and praying for an order of reparation against the defendants, respectively, on behalf of the members of the Cattle Raisers Association of Texas, as shippers, and others similarly situated, for their respective damages accruing by reason of the payment of said unjust and unreasonable rates.

That thereupon the Interstate Commerce Commission, after answers duly filed by all the said defendants therein and their connecting carriers, proceeded to a full hearing of the matters contained in said petition, and after such full hearing as provided by law, the Interstate Commerce Commission on April 14, 1908, by its report and opinion, 13 I. C. C. 419, in said cause, found that said rates as advanced and the advances of said rates were unjust and unreasonable, as found in the previous opinion of the Commission as above referred to, reported in 11 I. C. C. 298, the finding of the Commission in its said report of April 14, 1908, being in part as follows:

"It is our opinion, therefore, that the advances shown in the appendix to our former report which were effected by the defendants during the year 1903, were unjust and unreasonable; that the present rates produced by those advances are unjust and unreasonable; that the rates in effect previous to said advances would be just as reasonable and ought not to be exceeded for the future."

The report and opinion of the Interstate Commerce Commission as shown by the official report in said cause, 13 I. C. C. 419, is here referred to and the intervening petitioners ask that the same be taken as a part hereof. That in said report and opinion the Commission reserved for further consideration the matter of reparation when the specific claims thereafter should be presented.

That the Commission in its said last named report, and by supplemental order in said cause, prescribed and fixed [fol. 70] the reasonable rates for shipments of cattle from the points of origin named in said Appendix A hereinbefore referred to, to the destination therein named, being the same rates designated therein as "Rate ordered," which became effective November 17, 1908.

6. That the said parties named as consignors in said Appendix A above referred to, being the owners thereof, shipped the carloads of cattle as therein shown in said Appendix A, from the points of origin to the destinations shown in said Appendix A and paid to the defendant, St. Louis & San Francisco Railroad Company the rate of freight named in column marked "Rate paid," which rates as aforesaid were held by the Commission to be unjust, unreasonable and unlawful at the dates of said shipments, in the amounts as named in said Appendix A and that said owners as shippers and consignors were thereby damaged by defendant, in the amount of the unjust and unreasonable part of the rates as shown by the difference between "Rate paid" and "Rate ordered," as shown in Appendix A. The rate paid was as aforesaid found by the Commission to be unjust and unreasonable and the rate ordered was found to be the just and reasonable rate applicable to such shipments, when made.

7. And the intervening petitioners allege that the facts as found by said Commission in said report and opinion were true and correct. That said shippers named in said Appendix A as consignors, and E. B. Spiller as Secretary of the Cattle Raisers Association of Texas, and his predecessor in office, H. E. Crowley, in due time and in accordance with law, filed and caused to be filed with the Interstate Commerce Commission for and on account of the shippers named as consignors, and on account of said Spiller and Crowley as assignees for and on account of said shipment and freight paid, their petitions and claims for reparation for the amount of said unlawful charge which the Commission by its said report and order of January 12, 1914, Exhibit A hereto directed the defendant to pay. That certain of the said claims and rights of the said owners as shippers and consignors as aforesaid, the names and amounts being heretofore stated herein were duly and legally assigned to E. B. Spiller, so that he and said other interveners herein became and now are, the legal and equitable owners and holders thereof and entitled to have and recover the damages resulting to said shippers by reason of the premises, and as such were entitled to have the order of the Interstate Commerce Commission as aforesaid order-[fol. 71] ing and directing said carriers in said cause to pay said principal and interest together with interest thereon, and were entitled to recover the same together with interest and attorneys fees as provided by law.

8. That the said order of the Interstate Commerce Commission, Exhibit A hereof, directing the railroad therein named to pay the aforesaid damages as therein shown, was duly served upon each of the railway companies defendants therein, including St. Louis & San Francisco Railroad Company; but, though often requested, the said defendant, St. Louis & San Francisco Railroad Company failed and refused and still fails and refuses to pay the same or any part thereof, and is therefore liable to the intervening petitioners in the full amount of said damages, principal, interest and attorneys' fees.

9. That thereafter and within one year from January 12, 1914, the date when said Interstate Commerce Commission

ordered said defendant, St. Louis & San Francisco Railroad Company to pay to the intervening petitioners said sum of money as aforesaid, the intervening petitioners filed their petition in the District Court of the United States for the Western Division of the Western District of Missouri, against the said defendant, St. Louis & San Francisco Railroad Company and other railway carriers, numbered 4320 on the docket of said District Court, setting up the facts as aforesaid and of the order of said Interstate Commerce Commission requiring said defendant to pay to the intervening petitioners said sum of money and praying citation in due form against said defendant and on final hearing a judgment for the aforesaid damages, interest, costs and attorneys' fees. That thereafter the said defendant, St. Louis & San Francisco Railroad Company, having been duly served with summons, duly entered its appearance in said cause and said cause coming on thereafter to be heard upon the issues made by the pleadings therein, was tried and determined in said Court, a jury being waived by agreement and the facts found by the court as alleged on the 16th day of August, 1916 judgment was rendered by said court in favor of your intervening petitioners against said St. Louis & San Francisco Railroad Company for the sum aforesaid together with interest thereon from August 1, 1916 at six per cent per annum until paid and the further sums as aforesaid as attorneys' fees for prosecuting said action, which the said court found to be reasonable and which attorneys' fees said court found to be reasonable and which attorneys' fees [fol. 72] A true and verified copy of that portion of said judgment referring to said St. Louis & San Francisco Railroad Company being hereto attached and marked Exhibit "B" and made a part hereof. That no part of said judgment has been paid. That thereupon an agreement was made by and between the plaintiffs and said defendants that said judgment should remain in statu quo and abide the decision of case No. 4308 in which E. B. Spiller was plaintiff and said St. Louis & San Francisco Railroad Company and other carriers were defendants, which case No. 4308 was taken on writ of error by said defendants and each of them from the said United States District Court to the United States Circuit Court of Appeals for the Eighth Cir-

cuit, which thereafter on, to-wit, March 11, 1918, reversed the judgment of said District Court and remanded said cause to said District Court for a new trial; that thereafter in due time the same cause No. 4308 was taken by E. B. Spiller by writ of certiorari to the Supreme Court of the United States, where on the 17th day of May, 1920, the Supreme Court of the United States reversed the judgment of said Circuit Court of Appeals of said Eighth Circuit and affirmed the judgment of said District Court of the United States for the Western Division of the Western District of Missouri, with costs and remanded said cause to said District Court, and that by virtue of the agreement entered into as aforesaid, the said judgment in cause No. 4320 entered by said District Court became final.

10. Your intervening petitioners further show to the court that subsequent to the collection of said excess charges by the said St. Louis & San Francisco Railroad Company, there was at all times in its treasury down to the date of the appointment of Thomas H. West and Benjamin L. Winchell as receivers thereof, an amount of money equal to or in excess of the aggregate of the sums so collected in excess of the reasonable amount of said freights; that the gross receipt of said St. Louis & San Francisco Railroad Company from the time of the collection of said excess charges down to the appointment of said receiver, were in excess of its actual operating expenses, and since the appointment of said receiver the gross receipts have continuously been in excess of its actual operating expenses; that since the collection of said excess charges the said St. Louis & San Francisco Railroad Company has paid large sums in excess thereof, by way of interest on its mortgage indebtedness, and has expended for betterment and improvement large sums greatly in excess of said excess charges; that when said receivers were appointed they received from the St. Louis & San Francisco Railroad Company, as shown [fol. 73] by their inventory filed herein, in cash, over \$300,000.00; that eliminating all items except current receipts and current expenses, the earnings of said St. Louis & San Francisco Railroad Company, from the time said excess charges were collected down to the appointment of said receiver were largely in excess of its operating expenses; that the money so paid by said shippers in excess of the

reasonable and legal rate as fixed by said Interstate Commerce Commission was an illegal exaction and said money belonged to the shippers after the payment thereof the same as it did before such payment; that it was a part of the money in the treasury of the defendant company which passed to the receivers; that said money was not in any way subject to any liens of the mortgages or other instruments of writing executed by the defendant, St. Louis & San Francisco Railroad Company, and that by reason of the premises your intervening petitioners have a claim prior in lien and superior in equity to the liens and claims of any and all of the bondholders, trustees and mortgagees and other claimants holding claims or demands against said St. Louis & San Francisco Railroad Company; that it became and was the duty of said defendant railroad company and of its receivers and of the St. Louis & San Francisco Railway Company to repay to the intervening petitioner the amount of said judgment, interest and costs.

11. That it is provided in and by Article Ninth of the final decree heretofore entered in this cause that the purchaser of any of the property described in Article 26 or Article 27 of said decree and his and their successors and assigns shall as part of the consideration for any and all of the purchase price of the property purchased, and in addition to the sums bid by them and elsewhere in said decree required to be paid by him or them, take such property and transfer thereof, upon the express condition that he and receive the deeds or other instruments of conveyance and transfer thereof, upon the express condition that he and they, or his and their successors or assigns shall pay, satisfy and discharge:

“B. Any unpaid claim or creditors of the defendant railroad company which have been or shall be admitted by the parties in interest or adjudged by this court to be prior in lien or superior in equity to the refunding mortgage or the general lien mortgage.”

It is further provided in and by the last paragraph of said Article 9 of the final decree, that:

“In the event any purchaser, or successor or assigns, after demand made, shall refuse to pay any of the above

[fol. 74] mentioned indebtedness or liabilities which under the foregoing provision of this Article Ninth he is or may be required to pay, the person holding the claim, therefor, upon twenty days notice to such purchaser, his successors or assigns, may file a petition in this court to have such claim enforced against the property sold to such purchaser in accordance with the usual practice of this court in relation to payments of a similar character."

It is further provided by said final decree, that: "All questions not hereby disposed of are reserved for future adjudication," and by its further order made on the 29th day of January, 1918, the court further reserved unto itself jurisdiction in this cause for the purpose of determining questions and rights that may thereafter be presented to it. The intervenors state that their claim and judgment as aforesaid is prior in lien and superior in equity to the refunding mortgages and to the general lien mortgages, by reason of the facts stated aforesaid; that the St. Louis & San Francisco Railway Company is the purchaser of the properties of the St. Louis & San Francisco Railroad Company sold under the decree of this court in these cases, and that it thereby acquired all money in the hands of the receivers not otherwise used and disposed of, in accordance with the order of this court. That the intervenors duly demanded of the said St. Louis & San Francisco Railway Company, payment of said judgment, interest and costs, after the same had been made final by the decision and mandate of the United States Supreme Court, which payment the said St. Louis & San Francisco Railway Company, purchaser as aforesaid, refused to pay. That intervenors heretofore on the 2nd day of December, 1920, gave to said St. Louis & San Francisco Railway Company, as such purchaser, twenty days' notice of its intention to file this petition in this court to have such claim enforced against the property sold to it in accordance with the usual practice of this court in relation to payments of a similar character.

12. Intervenors further state, that the St. Louis & San Francisco Railroad Company, the receivers thereof, all of the parties to this cause, and the said St. Louis & San Francisco Railway Company as purchaser of said property had full knowledge and notice prior to the sale of said property

under the order of this court and prior to the confirmation of said sale that these intervenors had such claims and that they were being prosecuted in the courts of this circuit and in the Supreme Court of the United States, and that intervenors' claims were prior in lien and superior in equity to [fol. 75] the liens of said refunding bonds and of said general mortgage lien bonds and all other liens and claims these intervenors and their attorneys had no knowledge or notice whatever of the order of this court requiring persons having any claims or demands against the said railroad company to present and file their claims herein within the time therein fixed, or at any time; that they had no knowledge or notice whatever of the final decree entered herein at the time the same was so entered or at the time the said railroad properties were sold under said decree; that the first knowledge and notice that the intervenors and their attorneys, or any of them, had of said order of this court requiring the presentation of claims and of the final decree herein, was in August, 1916, at the time of the presentation to this court of certain objections to the confirmation of the sale, at which hearing at St. Louis, Missouri, the intervenors' attorneys were present and they then and there gave notice to the attorneys for the Reorganization Committee and for the purchasers of said railroad, and for the said railway company and the said railroad company, and the attorneys for the said Guaranty Trust Company and Bankers Trust Company, and all other parties to said cause, that the United States District Court for the Western Division of the Western District of Missouri, had given judgment on August 16, 1916, in intervenors' favor against the said railroad company for the amount as set forth above, and that intervenors would claim the same as prior in lien and superior in equity to the lien and claim of all of the other persons whomsoever against the property of the said railway company; that when those intervenors and their attorneys first learned of said order made by this court requiring all persons having any claims or demands to present the same on or before the 1st day of February, 1916, said time had expired; that intervenors were prosecuting their claims in the United States District Court for the

Western Division of the Western District of Missouri because they were required so to do by Section 16 of the Interstate Commerce Act, which provides:

"If the carrier does not comply with an order for the payment of money within the time limited in such order, the complainant, or any person for whose benefit such order was made, may file in the Circuit Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier or through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the par-[fol. 76] ties, a petition setting forth briefly the causes for which he claims the damages and the order of the Commission in the premises."

The railroad companies having failed to pay the amount ordered by the Interstate Commerce Commission on January 12, 1914, the only remedy intervenors had was to follow the remedy prescribed by the Act of Congress as set forth in said Section 16. The order of the Commission was dated January 12, 1914, which was duly served upon the said defendant railroad company and service thereof acknowledged by it in subsequent proceedings based upon said order, prosecuted in the United States District Court for the Western Division of the Western District of Missouri. The receivers were appointed by the order of this Court in May, 1913, and they immediately took charge of said railroad property and of all litigation to which said railroad was a party. The attorneys of said receivers were the same attorneys who had acted for said railroad company before the Interstate Commerce Commission in the said proceedings and continued to act as such until said order was made by said Interstate Commerce Commission. Said same attorneys also appeared and vigorously contested the claim of intervenors in case No. 4320 in the United States District Court for the Western Division of the Western District of Missouri, brought by intervenors against said railroad company and other carriers to enforce the order of said Interstate Commerce Commission. Said same attorneys acted for defendant in stipulating with intervenors that the judgment of said United States District Court at Kansas City in said case No. 4320 should abide the result of

a similar case, No. 4308, taken by said railroad company by writ of error to the United States Circuit Court of Appeals for the Eighth Circuit, where said attorneys appeared and vigorously contested the judgment of said United States District Court, and also appeared and contested said claim in the United States Supreme Court; that said railroad company gave bond for the costs that accrued upon its appeal from the judgment of the United States District Court to the United States Circuit Court of Appeals, and afterwards, recognizing its liability upon the bond and in order to protect its surety on said bond for costs, the defendant St. Louis & San Francisco Railway Company has paid to the intervenors a part of the costs therein unpaid and for which its bondsmen would be liable.

The appointment of the receivers made on the petition of the bondholders was May 22, 1914, so that said receivers were in full charge of defendant railroad company's property at the time intervenors commenced suit against the railroad company and other railroad companies, to recover upon the orders made by the Interstate Commerce Commission. Said suits were first commenced at Fort Worth, in the State of Texas, which were afterwards dismissed because all of the railroad companies, including the St. Louis & San Francisco Railroad Company, objected to the jurisdiction, claiming a right to be sued in the district where their principal offices were located or in some district where the railroads operate. To avoid the question of jurisdiction, therefore, said suit was commenced by intervenors at Kansas City, in the United States District Court for the Western District of Missouri, against all of the carriers affected by said proceedings, and at the same time a separate suit was commenced in this court in this division against the said St. Louis & San Francisco Railroad Company and process served upon said railroad company, of which the said receivers had full notice and knowledge, which last named suit was afterwards dismissed after judgment had been rendered in the joint suit brought at Kansas City. That service of process in said case at Kansas City was first had upon the agents of said receivers and the defendant railroad company made a special appearance therein and objected to said service. Whereupon further

service was had upon said railroad company. It was due entirely to protracted litigation and determined efforts upon the part of the railroad company and of the said receivers and of the said purchaser of the railway company after the purchase of said railroad by it, to defeat the rights of the intervenors and to have the courts decide that intervenors had no claim of any kind against the railroad company, that said claim was not reduced to judgment in ample time for intervenors to have intervened in this cause and presented their demand against the said railroad company within the time ordered by the court.

Intervenors further state that the principal object of said order was to give notice to all persons dealing with the property and to advise the court of the fact that such claim did exist and that object was fully obtained by the actual notice and knowledge on the part of the railroad company, of the receivers appointed by this court, and of all of the parties to this consolidated suit, and the attorneys, of the fact that such claim existed and was being prosecuted vigorously as possible in the courts of this circuit and of the United States Supreme Court. These intervenors, in August, 1916, at the time of the argument of the objections to the confirmation of the sale made by the Master, gave [fol. 78] personal and written notice to Henry W. Taft and the other attorneys representing the Reorganization Committee, and the purchase of the property the sale of which was then asked to be confirmed; that said notice was given to them in the court room of the Honorable Walter H. Sanborn, Judge, presiding, where he was at time sitting in St. Louis, Missouri, of all the facts under which the judgment had been rendered by the said United States District Court at Kansas City and that appeal had been taken, and that said cause was then pending in the United States District Court of Appeals.

Intervenors further state that no offer of any kind has ever been made by any of the parties to this cause, either the defendant railroad company or the purchaser, the railway company, of any of the mortgage bondholders or others, to make any payment of these claims of the intervenors, of any kind and nature, or to make any settlement whatsoever with the intervenors on account thereof; so that the intervenors say that said Railway Company, said Rail-

road Company, said trustees and mortgage bondholders and stockholders have each and all had full knowledge and notice of the pendency of the intervenors' claim and demand and of the nature thereof.

Wherefore, the premises considered, intervenors respectfully ask this court to make an order permitting them to file this intervening petition, to order that it be referred to a Master in Chancery, that upon a hearing it be ordered, adjudged and decreed by the court that these intervenors have a just demand for the amount of said judgment, to-wit, (\$3,652.97) three thousand six hundred fifty-two and 97/100 Dollars, with interest thereon from August 1, 1916 at six per cent per annum and \$365.29 attys.' fees taxed as costs; that it is a just demand, prior in lien and superior in equity to the refunding mortgage and the general lien mortgage of the St. Louis & San Francisco Railroad Company, and that unless paid such claim be enforced against the property sold to the St. Louis & San Francisco Railway Company under the final decree of the court entered in this cause, in accordance with the usual practice of this court in relation to payments of a similar character.

S. H. Cowan, B. F. Deatherage, Solicitors & Attorneys for Intervenors.

[fol. 79] *Duly sworn to by B. F. Deatherage. Jural omitted in printing.*

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Exhibit "A" omitted here as same is identical with Exhibit A attached to Intervening Petition of E. B. Spiller heretofore set out.

## EXHIBIT B TO INTERVENING PETITION OF E. B. SPILLER ET AL.

No. 4320

E. B. SPILLER and Others, Plaintiffs,

VS.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY and  
Others, Defendants

## Judgment

Now on this day this cause coming on regularly to be heard and considered, all of the parties plaintiffs and defendants, by their respective attorneys, having heretofore appeared and having by written stipulation herein waived a jury and submitted this cause to the Court and all of the evidence having been heretofore introduced, seen and heard by the Court, and briefs of counsel having been submitted, seen and read by the Court and oral arguments of counsel having been duly heard by the Court, the Court now being fully advised in the premises, finds all of the issues made by the pleadings both of law and fact in favor of the plaintiffs and finds the facts to be as stated in the first count of plaintiff's petition herein.

[fol. 80] Wherefore it is considered ordered, adjudged and decreed by the Court, that the plaintiff E. B. Spiller, as assignee of the following named persons as consignors, namely, Brown and Biggerstaff, T. L. Burnett, P. R. Clark, Mrs. H. M. King and William Watson, do have and recover of and from defendant St. Louis San Francisco Railroad Company the sum of Nine Hundred Ninety-five and 82/100 Dollars (\$995.82) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the said above named consignors by said St. Louis & San Francisco Railroad Company on or before June 15th, 1914, which has since that time been assigned to the plaintiff E. B. Spiller; and do have and recover the furth sum of One Hundred Twenty-six and 99/100 Dollars (126.99) being the interest at six per cent per annum on said sum of \$995.82 from June 15th, 1914 to August 1, 1916, being a total sum of Eleven Hundred Twelve and 81/100 Dollars together with interest thereon from August 1st, 1916, at six per cent

per annum until paid, and that the said E. B. Spiller have and recover of and from the said St. Louis and San Francisco Railroad Company as such assignee, the further sum of One Hundred Eleven and 28/100 Dollars (111.28) as attorneys fees for prosecuting this action, which sum the Court finds to be reasonable, which attorneys fees shall be taxed as costs herein; and that the said plaintiff E. B. Spiller have and recover of the said St. Louis & San Francisco Railroad Company his costs laid out and expended, for all of which let execution issue.

And it is further ordered, adjudged and decreed by the Court that each of the following named plaintiffs do have and recover of and from the said St. Louis & San Francisco Railroad Company the sums of money set opposite their respective names, being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to each of the said plaintiffs, respectively, by the said St. Louis & San Francisco Railroad Company on or before June 15, 1914, and that each of said plaintiffs do have and recover the further sums set opposite their respective names, being the interest at six per cent per annum from June 15, 1914 to August 1, 1916, on the amount ordered by the said Interstate Commerce Commission to be paid to plaintiffs, respectively, and being a total sum in favor of each of the plaintiffs hereinafter named set opposite their respective names, together with interest thereon from August 1, 1916, at six per cent per annum until paid; and that each of the said plaintiffs do have and recover of and from said St. Louis & San Francisco Railroad Company the further sum set opposite their respective names as attorneys fees for prosecuting this action, which sum the Court finds to be reasonable as attorneys fees and which attorneys fees shall be taxed as costs herein; and that each of the said plaintiffs also have and recover of said St. Louis & San Francisco Railroad Company their costs, respectively, herein laid out and expended, for all of which let execution issue in favor of each of them. The names of said plaintiffs and the amounts adjudged in favor of each of them against said St. Louis & San Francisco Railroad Company being shown in the following list: the first column the name of each plaintiff; opposite in the second column, the principal; in the third column, interest

thereon ordered by the Interstate Commerce Commission to be paid to each plaintiff; the fourth column, the interest on the amount so ordered by the Interstate Commerce Commission to be paid from June 15, 1914; the fifth column the total amount hereby adjudged in favor of each plaintiff against the St. Louis and San Francisco Railway Company; in the sixth column the 10 per cent attorneys fees adjudged in favor of such plaintiff against the said defendant.

Name	Principal	Interest	Int. from		Att'y's fee
			6-15-14	Total 10%	
Bailey & Townsend.....	22.00	8.60	3.90	34.50	3.45
Baker & Brown.....	13.20	4.26	2.22	19.63	1.96
W. M. Barringer.....	13.20	4.48	2.25	19.63	1.99
Battles & Denton.....	125.40	39.97	21.08	186.45	18.64
G. W. Battles.....	33.00	12.85	5.88	51.69	5.16
F. N. Belshe.....	15.40	5.05	2.60	23.05	2.30
Boedecker & Ball.....	19.80	8.06	3.55	31.41	3.14
T. J. Brown.....	8.25	3.15	1.45	12.85	1.28
Cain & Keller.....	48.95	16.92	8.33	74.24	7.42
Thomas Chism.....	19.25	7.48	3.41	30.14	3.01
Tom Durant.....	22.00	9.65	4.03	35.65	3.56
S. H. Elliott.....	46.20	19.32	8.33	73.85	7.38
R. M. Evans.....	19.80	6.34	3.31	29.45	2.94
C. J. Fogleman.....	19.80	6.67	3.37	29.84	2.98
R. L. Hall.....	19.80	6.38	3.33	29.51	2.95
J. R. Hamilton.....	19.80	6.63	3.50	29.93	2.99
Hogenkamp Haynes.....	26.40	10.58	4.71	41.69	4.16
Hensley & Brumit.....	69.30	22.61	11.71	103.62	10.36
Hodges & Payne.....	178.20	57.35	29.99	265.34	26.53
G. W. Jackson.....	6.60	2.89	1.20	10.69	1.06
R. H. Jackson.....	46.20	15.16	7.82	69.20	6.92
[fol. 82] James & Cradin..	13.20	4.31	2.22	19.73	1.97
James & Jamison.....	99.00	32.07	16.71	147.78	14.77
J. E. Kelley.....	9.90	4.17	1.79	15.86	1.58
Kimble & Co.....	3.30	1.29	.68	5.17	.51
King Brothers.....	6.60	2.02	1.09	9.71	.97
Lance & Charley.....	33.00	10.80	5.58	49.38	4.93
Murrell & Clary.....	21.45	9.29	3.92	34.66	3.46
W. L. Payne & Son.....	245.30	78.91	41.33	365.54	36.55
J. J. Pickens.....	6.60	2.13	1.11	9.84	.98
F. B. Severs.....	35.20	11.35	5.92	52.47	5.24
T. J. Smith.....	53.90	21.98	9.67	85.55	8.55
Cal Stewart.....	33.00	14.58	6.16	53.74	5.37
R. W. Stubblefield.....	19.80	6.49	3.35	29.64	2.96
Three Circle Ranch.....	26.40	11.22	4.79	42.41	4.24
N. T. Trout.....	14.30	4.65	2.41	21.36	2.13
Frank Vincent.....	42.90	14.05	7.26	64.21	6.42
Wall & McFish.....	46.20	15.32	8.15	69.67	6.96
O. G. Warren.....	61.60	25.07	11.06	97.73	9.77
H. Willis.....	26.40	8.53	4.45	39.38	3.93
W. D. Woods.....	19.80	6.50	3.35	29.65	2.96
J. A. Wynne.....	46.20	14.89	7.78	68.87	6.88
Yohoke Farm & Stock Co..	13.75	4.40	2.30	20.45	2.04

(Signed) Arba S. Vaavalkenburgh, Judge.

## IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO E. B. SPILLER TO FILE SEPARATE  
AND SUPPLEMENTAL INTERVENING PETITION—March 10,  
1921

Upon consideration of the application of E. B. Spiller, for leave to file herein a separate and supplemental intervening petition, which application was this day filed, and after hearing arguments of Walter H. Saunders, Esq., appearing on behalf of intervenor, and of Edward T. Miller, Esq., appearing on behalf of respondents, it is now

Ordered that said application be granted; that the applicant have leave to file said supplemental intervening petition; that the St. Louis-San Francisco Railway Company answer said petition or take such other action against it as it may be advised within twenty days after service of this order upon it- attorneys, and that the issues raised by the said intervention be and they are hereby referred to the [fol. 83] Special Master for hearing, consideration and report of the facts and his conclusions.

(Signed) Walter H. Sanborn, Senior Circuit Judge.

## IN UNITED STATES DISTRICT COURT

SEPARATE AND SUPPLEMENTAL INTERVENING PETITION OF  
E. B. SPILLER—Filed March 10, 1921

[Title omitted]

Comes now your petitioner, E. B. Spiller, and shows to your Honor that his claim in his petition of intervention, heretofore filed herein, insofar as the same relates to attorneys' fees adjudged in his favor by the District Court of the United States for the Western Division of the Western District of Missouri, and taxed as costs in cause No. 4308 in said District Court, rests upon the additional and further grounds for allowance as a preferential claim, and to payment thereof by the receivers as hereinafter stated; that your petitioner refers to his said petition of intervention [fol. 84] heretofore filed in this cause and prays that the same be made and considered a part hereof with the same

effect and force as if all the facts therein stated were set out herein.

That upon the appointment of the receivers herein, they were, by order of this court then made and others thereafter made as appear of record in this cause, directed and ordered to prosecute and defend all suits at law or in equity against the defendant St. Louis & San Francisco Railroad Company; that as appears from the allegations in your petitioner's intervening petition heretofore filed herein, said above mentioned cause No. 4308 was pending in the District Court of the United States for the Western Division of the Western District of Missouri after the receivers herein were appointed; that by the direction of the receivers herein counsel for the receivers appeared in said cause and conducted the defense of said cause on behalf of the defendant St. Louis & San Francisco Railroad Company and continued to defend the same, taking an appeal from the judgment of the said District Court of the United States for the Western Division of the Western District of Missouri to the Circuit Court of Appeals of the Eighth Circuit and *defendant* said cause in the Supreme Court of the United States, to which Court said cause was carried by your intervening petitioner on a writ of certiorari; that when said cause No. 4308 was appealed to said United States Court of Appeals for the Eighth Circuit, the receivers herein obtained and caused to be filed in said cause a cost bond, conditioned among other things, that the defendant St. Louis & San Francisco Railroad Company, would answer all costs if it failed to make good its appeal; that said bond was in the penal sum of Thirty-five Hundred (\$3500.00) Dollars; that in obtaining said bond the receivers herein indemnified the surety company signing and executing the same as surety against loss by reason of having executed said bond; that the amount of attorneys' fees adjudged by the court to your intervening petitioner and taxed as costs in said cause No. 4308 was Four Thousand Five Hundred and Eighty-six and 32/100 (\$4586.32) Dollars; that to relieve the surety on said cost bond and because of the agreement of indemnity aforesaid, the receivers herein have paid off and discharged the amount of said bond, paying the clerk's costs and the sum of Three Thousand Three Hundred and Fifty-one and 19/100

(\$3351.19) Dollars of the attorneys' fees taxed as costs as aforesaid, leaving a balance of said costs unpaid of Twelve Hundred Thirty-five and 13/100 (\$1235.13) Dollars, which [fol. 85] amount is due and owing to your intervening petitioner; that said attorneys' fees, taxed as costs as aforesaid, and said costs consisting of said attorneys' fees allowed by said District Court, were incurred and made by the action of the receivers pursuant to the orders of this court in defending and litigating said cause No. 4308; that by virtue of all the premises, said railroad company and the receivers herein should be required and ordered to pay the balance of said attorneys' fees taxed as costs as aforesaid.

Wherefore, by reason of the premises and by reason of the facts set forth in your intervening petitioner's original bill of intervention heretofore filed herein, your petitioner prays that the receivers herein be ordered to pay to your petitioner or to the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri for your intervening petitioner said sum of Twelve Hundred Thirty-five and 13/100 (\$1,235.13) Dollars, attorneys' fees so taxed as costs in said cause No. 4308.

(Signed) S. H. Cowan, John S. Leahy, Walter H. Saunders, D. A. Murphy, Solicitors for Intervening Petitioner, E. B. Spiller.

*Duly sworn to by D. A. Murphy. Jurat omitted in printing.*

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[fol. 86] IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO FILE SUPPLEMENTAL INTERVENING PETITION OF E. B. SPILLER ET AL.—March 10, 1921

Upon consideration of the application of E. B. Spiller, et al. for leave to file herein a supplemental intervening petition, which application was this day filed, and after hearing argument of Walter H. Saunders, Esq., appearing on behalf of interveners, and of Edward T. Miller, Esq., appearing on behalf of respondents, it is now

Ordered that said application be granted; that the applicants have leave to file said supplemental intervening petition; that the St. Louis-San Francisco Railway Company answer said petition or take such other action against it as it may be advised within twenty days after service of this order upon its attorneys, and that the issues raised by the said intervention be and they are hereby referred to the Special Master for hearing, consideration and report of the facts and his conclusions.

(Signed) Walter H. Sanborn, Senior Circuit Judge.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

Consolidated Cause Final.

SUPPLEMENTAL INTERVENING PETITION OF E. B. SPILLER  
ET AL.—Filed March 10, 1921

[fol. 87] Come now your petitioners, E. B. Spiller, Bailey & Townsend, Baker & Brown, W. M. Barringer, Battles & Denton, C. W. Battles, F. N. Belshe, Boedecker & Ball, T. J. Brown, Cain & Kelley, Thomas Chism, Tom Durant, S. H. Elliott, R. M. Evans, C. J. Fogleman, R. L. Hall, J. R. Hamilton, Haynes & Hogenkamp, Hensley & Brumit, Hodges & Payne, G. W. Jackson, R. H. Jackson, James & Cardin, James & Jamison, J. E. Kelley, Kimble & Co., King Bros., Lance & Charley, Murrell & Clary, W. L. Payne & Son, J. J. Pickens, F. B. Severs, T. J. Smith, Cal Stewart, R. W. Stubblefield, Three Circle Ranch, N. T. Trout, Frank Vincent, Wall & McFish, O. G. Warren, H. Willis, W. D. Woods, J. A. Wynne, and Yohoko Farm & Stock Company, and show to your Honor that their claim in their petition of intervention, heretofore filed herein, insofar as the same relates to attorneys' fees adjudged in their favor by the District Court of the United States for the Western Division of the Western District of Missouri, and taxed as costs in cause No. 4320 in said District Court, rests upon the additional and further grounds for allowance as a preferential claim and to payment by the re-

ceivers herein as hereinafter set forth; that your petitioners refer to said intervening petition heretofore filed by them herein and pray that said intervening petition may be made a part hereof with the same force and effect as if all the facts stated therein were set out in full herein.

That upon the appointment of the receivers herein, the said receivers were by order of this court then made and by orders thereafter made, as appear of record in this cause, directed and ordered to prosecute and defend all suits at law or in equity, brought against the defendant, St. Louis & San Francisco Railroad Company; that as appears from the allegations of your petitioners' intervening petition heretofore filed herein, said cause No. 4320 was brought and pending in the District Court of the United States for the Western Division of the Western District of Missouri [fol. 88] after said receivers herein were appointed; that by direction of the receivers herein counsel for said receivers appeared in said cause and conducted the defense of said cause on behalf of the defendant, St. Louis & San Francisco Railroad Company, and continued to defend the same to judgment; that at the time said cause No. 4320 was pending in said District Court, there was another cause pending in said District Court, entitled E. B. Spiller versus St. Louis & San Francisco Railroad Company, et al., and numbered 4308; that a stipulation was entered into by and between counsel for your interveners and counsel for the receivers herein which provided that the result in said cause No. 4320 should abide the final judgment in said cause No. 4308, and that the same character of judgment should be entered in said cause No. 4320 as was finally entered in said cause No. 4308; that judgment was rendered by the said District Court of the United States for the Western Division of the Western District of Missouri in said cause No. 4308, in favor of the plaintiff, E. B. Spiller; that the defendant in said cause No. 4308, acting through counsel for the receivers herein, appealed from said judgment of the District Court to the Circuit Court of Appeals of the Eighth Circuit, and prosecuted said appeal in said last named court, and defended said cause in the Supreme Court of the United States, to which court said cause was carried by the plaintiff therein, E. B. Spiller, on a writ of

certiorari; that the Supreme Court of the United States, on or about the 17th day of May, 1920, reversed said Circuit Court of Appeals and affirmed the judgment of said District Court in favor of said Spiller; that the amount of the attorneys' fees adjudged by the said District Court to your intervening petitioners, taxed as costs in said cause No. 4320 was Three Hundred Sixty-four and 82 100 (\$364.82) Dollars, no part of which has been paid by the defendant herein or by the receivers herein; that said costs, consisting of attorneys' fees allowed by said court as aforesaid, were incurred and made by said action of the receivers herein in defending and litigating said cause No. 4320 and said cause No. 4308, and the amount thereof is now due and owing to your intervening petitioners; that by virtue of all the premises, said railroad company and the receivers, herein should be required and ordered to pay the said attorneys' fees taxes as costs as aforesaid and amounting (as aforesaid to Three Hundred Sixty-four and 82 100 (\$364.82) Dollars.

Wherefore, by reason of the premises, your petitioners pray that the receivers herein be ordered to pay to your [fol. 89] petitioners or to the Clerk of the District Court of the United States for the Western Division of the Western District of Missouri for your petitioners said sum of Three Hundred Sixty-four and 82 100 (\$364.82) Dollars, attorneys' fees so taxed as costs in said cause No. 4320.

S. H. Cowan, John S. Leahy, Walter H. Saunders,  
D. A. Murphy, Solicitors for Intervening Petitioners,  
E. B. Spiller et al.

*Duly sworn to by D. A. Murphy. Jurat omitted in printing.*

## IN UNITED STATES DISTRICT COURT

[Title omitted]

## Consolidated Cause Final

In the Matter of the Intervening Petition of E. B. Spiller,  
Intervening Petition No. 403

ANSWER OF DEFENDANT TO INTERVENING PETITION—Filed  
November 30, 1921

Comes now above-named defendant and by leave of Court, files this, its answer to the intervening petition of E. B. Spiller, and answering, states:

1. Defendant pleads in bar of the claim presented by said intervening petition that said claim arose between the [fol. 90] period of August, 1906, to November, 1908, and many years prior to May 27, 1913, the date of the appointment of Receivers in this cause; that by the terms of the Interlocutory Decree made, entered and filed in this cause, all holders of claims against the defendant herein were required to file in this cause on or before the date fixed therefor in said Interlocutory Decree, which date was subsequently extended by orders made and entered herein to February 1, 1916, and not thereafter; that said claim presented by intervenor herein was determined and established by the Interstate Commerce Commission long prior to February 1, 1916, yet said claim was not filed herein prior to the date last aforesaid. Railway Company hereby refers to said Interlocutory Decree and to the orders of this Court extending the time for filing claims as aforesaid as a part of the record in cause to the same effect as if the same were fully set forth herein. By reason whereof defendant avers that said intervening petition and the claim presented thereby should be dismissed.

2. Defendant further pleading in bar of the claim presented by said intervening petition avers that said claim arose prior to the entry of the Final Decree herein, to which Final Decree defendant hereby refers to the same effect as if the same were made a part hereof; that in and by said

Final Decree and by Articles Ninth and Tenth thereof it was formally adjudicated and decreed that notice had been given for the presentation in this cause of all claims and demands against defendant of every character and description whatsoever, and that the time for the presentation of said claims and demands had expired, and that no claim or demand of the nature of the claim presented by said intervening petition filed herein that had not been presented in this cause pursuant to decrees and orders herein made should be enforceable against the Receivers appointed in this cause or against the property sold or any part or portion thereof, or against any purchaser of the same or any part thereof, his successors or assigns, nor should the holder thereof be entitled to the benefits of Article Ninth of said Final Decree, nor should any such claim or demand not so presented be entitled to share in the distribution of any of the proceeds of sale under said Final Decree. By reason whereof defendant prays that said intervening petition and the claim thereby presented be dismissed.

3. Defendant further pleading in bar of the claim presented by said intervening petition avers that on January [fol. 91] 11, 1915, intervenor instituted suit in this Court against defendant upon the same claim now presented, to which suit answer was duly filed on April 12, 1915, and reply thereto was filed on April 15, 1915; that said cause was subsequently continued from time to time and on March 19, 1917, was dismissed for want of prosecution; that on March 22, 1917, on intervenor's motion said dismissal was vacated and said cause again continued from time to time and was finally dismissed by this Court for want of prosecution on December 6, 1918. Intervenor having failed to prosecute said suit and having suffered said suit to be dismissed for want of prosecution is now estopped and precluded from attempting to prosecute his said claim in this cause. By reason whereof said intervening petition and the claim thereby presented should be dismissed.

4. Defendant therefore prays by reason of the foregoing that the orders heretofore made in this cause allowing said intervening petition to be filed herein be set aside and for naught held, and that said intervening petition be dismissed.

Defendant, without waiving its pleas in bar hereinbefore stated, and continuing to insist and to rely upon the same in bar of the further prosecution of said intervening petition, answering said intervening petition, states:

First. It admits the allegations of paragraph 1 thereof.

Second. Answering paragraph 2 of said intervening petition it admits that on January 12, 1914, the Interstate Commerce Commission made an order directing defendant and other carriers named in said order to pay to intervener damages resulting from the rates charged by said carriers on the shipments of cattle shown in said order, and that the amount so ordered paid is correctly set forth in said paragraph 2 of said intervening petition; denies that intervener is the lawful assignee in respect of said damages of the consignors referred to in said paragraph 2.

Third. Answering paragraph 3 of said intervening petition it admits the allegations thereof.

Fourth. Answering paragraph 4 of said intervening petition it admits the allegations thereof except the allegation that the advanced rates therein referred to were unlawful or found to be unlawful by the Interstate Commerce Commission, which allegation it denies.

Fifth. Answering paragraph 5 of said intervening petition it admits the allegations thereof.

[fol. 92] Sixth. Answering paragraph 6 of said intervening petition it admits that the matters and things therein stated were made and determined by the said Interstate Commerce Commission as stated in said paragraph, except that it denies that said Commission found said rates to be unlawful.

Seventh. Answering paragraph 7 of said intervening petition it denies that the facts as found by said Interstate Commerce Commission in its said report and opinion were true and correct; denies that the said claims and rights of said owners as shippers and consignors as stated in said paragraph were duly and legally assigned to intervener; denies that intervener was at the date of said order of said

Interstate Commerce Commission and now is the legal and equitable owner and holder of said claims and rights and denies that intervener is entitled to recover the same.

Eighth. Answering paragraph 8 of said intervening petition it admits service upon defendant of said order of said Interstate Commerce Commission and that defendant has failed to pay the same or any part thereof; denies that defendant is liable to intervener for the full amount herein claimed or for any part thereof.

Ninth. Answering paragraph 9 of said intervening petition it admits the allegations of the first section thereof, but answering the last section in said paragraph it denies that it has paid a part of the costs taxed against it in said cause, including \$3,351.00 as part of the attorneys' fees.

Tenth. Answering paragraph 10 of said intervening petition it denies that subsequent to the collection of said charges by defendant there was at all times in its treasury down to the date of the appointment of said Receivers an amount of money equal to or in excess of the aggregate of intervener's claim; denies that the gross receipts of defendant from the time of the collection of said charges to the appointment of said Receivers were in excess of its actual operating expenses, and avers that it is without knowledge that since the appointment of said Receivers the gross receipts have continuously been in excess of defendant's actual operating expenses; admits that since the collection of said charges defendant has paid large sums in excess thereof by way of interest on its mortgage indebtedness and for betterments and improvements; admits that when said Receivers were appointed they received from defendant in cash over \$300,000.00; denies that the earnings of defendant, eliminating all items except current receipts and [fol. 93] current expenses, from the time said charges were collected to the appointment of said Receivers were largely in excess of defendant's operating expenses; denies that the money so paid by said shippers in excess of the reasonable rates as fixed by said Interstate Commerce Commission was an illegal exaction, or that said money belonged to said shippers after payment thereof the same as it did before such payment; denies that it was part of the money in

the treasury of defendant which passed to said Receivers; denies that said money was not in any way subject to any liens of the mortgages or other instruments of writing executed by defendant; denies that intervener has a claim prior in lien or superior in equity to the liens and claims of any and all of the bondholders, trustees and mortgagees, and other claimants, holding claims and demands against defendant; denies that it became and was the duty of defendant and of said Receivers and of defendant to repay to intervener the amount of said judgment, interest and costs.

Eleventh. Answering paragraph 11 of the intervening petition it admits that a portion of Article Ninth of said Final Decree entered in this cause is correctly stated therein, but refers said Final Decree in its entirety to the Court for the correct interpretation thereof; denies that intervener's claim and judgment, or either of them, are prior in lien or superior in equity to the Refunding Mortgages and the General Lien Mortgages referred to in said Final Decree; admits that St. Louis-San Francisco Railway Company is the purchaser of the properties of defendant sold under said Final Decree; avers that it is without knowledge that intervener duly demanded of defendant payment of said judgment, interest and costs after the same had been made final by the Supreme Court of the United States.

Twelfth. Answering paragraph 12 of said intervening petition it denies that it had full knowledge and notice prior to the sale of said property and prior to the confirmation of said sale that intervener had his said claim and was prosecuting the same in court; avers that it is without knowledge that said Receivers had knowledge thereof; denies that defendant had knowledge that intervener's said claim was prior in lien or superior in equity to the liens of said Refunding Bonds, said General Lien Bonds, and all other liens and claims on defendant's property; avers that intervener's claim was not prior in lien or superior in equity to the liens of said Refunding Bonds or of said General Mortgage Lien Bonds, or to any other liens or claims against defendant's property; denies that intervener and his attorneys had no knowledge or notice whatever of the order of this Court requiring persons having any claims or de-

mands against defendant to present and file the same herein within the time therein fixed, or at any time; denies that intervenor and his attorneys had no knowledge or notice whatever of the Final Decree herein when the same was entered or at the time of the sale of defendant's property under said decree; denies that the first knowledge and notice that intervenor and his attorneys, or either thereof, had of said order of this Court requiring the presentation of claims and of the Final Decree herein was in August, 1916; avers that it is without knowledge that at the hearing upon the confirmation of said sale intervenor's attorneys gave notice to the attorneys for the Reorganization Committee and for the purchasers of said railroad of defendant and for St. Louis-San Francisco Railway Company and defendant, and the attorneys for the Guaranty Trust Company and Bankers Trust Company and all other parties to said cause, that the United States District Court for the Western Division of the Western District of Missouri had given judgment on August 10, 1916, in intervenor's favor against defendant for the amount set forth in the intervening petition, and that intervenor would file the same as prior in lien and superior in equity of the lien and claim of all other persons whomsoever against the property of defendant; denies that when intervenor and his attorneys first learned of said order requiring the presentation of claims against defendant on or before February 1, 1916, said time had expired; admits that intervenor was prosecuting his claim in said United States District Court, but avers that intervenor had full opportunity to file but failed to file said claim in this Court in this cause as required by said orders and decrees of this Court; denies that the only remedy intervenor had was that prescribed by the Act of Congress as set forth in Section 16 of the Interstate Commerce Act; admits that said Receivers were appointed as such in May, 1913; denies that defendant by its attorneys, who were the same attorneys who acted for and in behalf of the Receivers of defendant, appeared in said cause in said United States District Court for the Western Division of the Western District of Missouri and acted for defendant and took an appeal from the judgment of said Court to the United States Circuit Court of Appeals for the Eighth Circuit and there contested said decision in said

District Court, and also appeared and there contested said decision in the United States Supreme Court; admits that a portion of the cost in said litigation, secured by defendant's appeal bond, has been paid pursuant to the provisions of said bond; admits that on May 22, 1914, said Receivers were in charge of defendant's property; admits that suit by intervener against defendant was first commenced at Fort Worth, Texas, and was there dismissed and subsequently instituted in the United States District Court at Kansas City, Missouri, and that a separate suit was commenced in this Court and in this Division against defendant and that said suit was subsequently dismissed; denies that it was due entirely to protracted litigation and determined efforts upon the part of said defendant and of said Receivers and of Railway Company to defeat the rights of intervener and to have the courts decide that intervener had no claim against defendant, that intervener's claim was not reduced to judgment in ample time for intervener to have intervened in this cause, and to have presented his demand within the time ordered by this Court; denies that the principal object of said order of this Court was to give notice to all persons dealing with defendant's property and to advise this Court of the fact that such a claim did exist, and that that object was fully obtained by the actual notice and knowledge on the part of defendant, of said Receivers, of all parties to this suit, and their attorneys, of the fact that intervener's claims existed and [was] being prosecuted in the courts; admits that a principal object of said order was to give notice to all claimants against defendant of the terms and requirements of said order; avers that it is without knowledge that intervener in August, 1916, gave personally a written notice to Henry W. Taft and other attorneys representing the Reorganization Committee and the purchasers of the property of defendant of all the facts under which intervener's said judgment had been obtained and of the subsequent steps by appeal therein taken; avers that it is without knowledge that no effort of any kind has been made by St. Louis-San Francisco Railway Company or any of the mortgage bondholders or others to make any payment or settlement of intervener's claim; deny that said Trustee and mortgage bondholders, St. Louis-San Francisco Railway and defendant, have each and all had full

knowledge and notice of the pendency of intervener's claim and demand and of the nature thereof.

6. Further answering defendant denies that said claims of intervener [is] prior in lien or superior in equality to the Refunding Mortgage and General [Line] Mortgage of defendant.

7. Further answering defendant avers that the charges collected by defendant and sought to be recovered herein [fol. 96] were collected during the period of August 1906, to November, 1908; thatt he sum of money so collected passed into the Treasury of defendant and were by defendant long prior to May, 1913, paid out and expended by defendant as a part of the current and ordinary operating expenses of conducting defendant's system of railroads, and that no part of such sums so collected by defendant remained in defendant's treasury or elsewhere under its control at the time said Receivers were appointed in May, 1913, and that no part of said sums of money ever came into the possession of said Receivers but that all thereof was expended as aforesaid long prior to the appointment of said Receivers.

8. Further answering defendant avers that the freight charges so collected by defendant in respect of which recovery is herein sought were collected at regular tariff rates then prescribed by the tariffs under which the shipments to which said charges were applied were transported, and that the freight charges so collected by defendant were the only legal charges that defendant could by law collect in respect of such shipments.

9. Further answering defendant avers that by reason of intervener's failure to file his said claim herein in the time prescribed by the terms of said interlocutory Decree, as such times were subsequently extended as aforesaid, intervener is guilty of laches in respect of the presentation of his said claim and should not be heard in a court of equity to now present for allowance and have allowed his said claim.

10. Defendant further avers that should the Court permit said claim to remain filed and consider and allow the same, that the same should be allowed only as a general unsecured creditors' claim without priority in lien or superiority in

equity over any of the mortgages of St. Louis-San Francisco Railway Company or of defendant.

Wherefore, having fully answered, defendant prays (a) that said intervening petition be dismissed, or in the event the Court hears and considers and allows the claims presented thereby, in whole or in part, that (b) the same be allowed only as general unsecured creditors claims against defendant as aforesaid.

(Signed) W. F. Evans, E. T. Miller, Solicitors for Defendant.

[fol. 97] We hereby consent to the filing of the foregoing answer. November 28, 1921.

(Signed) S. H. Cowan, D. A. Murphy, John S. Leahy, Walter H. Saunders, Attorneys for Intervenor.

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IN UNITED STATES DISTRICT COURT

ANSWER TO PETITION AND SUPPLEMENTAL PETITION—Filed  
April 6th, 1921

Comes now St. Louis-San Francisco Railway Company, a party herein and hereinafter referred to as "Railway Company," and answering the intervening petition and supplemental intervening petition of E. B. Spiller, states:

1. Railway Company pleads in bar of the claim presented by said intervening petition and supplemental intervening petition that said claim arose between the period of August, 1906, to November, 1908, and many years prior to May 27, 1913, the date of the appointment of Receivers in this cause; that by the terms of the Interlocutory Decree made, entered and filed in this cause, all holders of claims against the defendant herein were required to file the same in this cause on or before the date fixed therefor in said Interlocutory Decree, which date was subsequently extended by orders made and entered herein to February 1, 1916, and not thereafter; that said claim presented by intervenor herein was determined and established by the Interstate Commerce Commission long prior to February 1, 1916, yet

said claim was not filed herein prior to the date last aforesaid. Railway Company hereby refers to said Interlocutory Decree and to the orders of this Court extending the time for filing claims as aforesaid as a part of the record in this cause to the same effect as if the same were fully set forth herein. By reason whereof Railway Company avers that said intervening petition and said supplemental intervening petition and the claim presented thereby should be dismissed.

2. Railway Company further pleading in bar of the claim presented by said intervening petition and supplemental intervening petition avers that said claim arose prior to the entry of the Final Decree herein, to which Final Decree Railway Company hereby refers to the same effect as if [fol. 98] the same were made a part hereof; that in and by said Final Decree and by Articles Ninth and Tenth thereof it was formally adjudicated and decreed that notice had been given for the presentation in this clause of all claims and demands against defendant of every character and description whatsoever, and that the time for the presentation of said claims and demands had expired, and that no claim or demand of the nature of the claim presented by said intervening petition and supplemental intervening petition filed herein that had not been presented in this cause pursuant to decrees and orders herein made should be enforceable against the Receivers appointed in this cause or against the property sold or any part or portion thereof, or against any purchaser of the same or any part thereof, his successors or assigns, nor should the holder thereof be entitled to the benefits of Article Ninth of said Final Decree, nor should any such claim or demand not so presented be entitled to share in the distribution of any of the proceeds of sale under said Final Decree. By reason whereof Railway Company prays that said intervening petition and supplemental intervening petition and each of them and the claim thereby presented be dismissed.

3. Railway Company further pleading in bar of the claim presented by said intervening petition and supplemental intervening petition avers that on January 11, 1915, intervener instituted suit in this Court against defendant upon the same claim now presented, to which suit answer

was duly filed on April 12, 1915, and reply thereto was filed on April 15, 1915; that said cause was subsequently continued from time to time and on March 19, 1917, was dismissed for want of prosecution; that on March 22, 1917, on interveners' motion said dismissal was vacated and said cause again continued from time to time and was finally dismissed by this Court for want of prosecution on December 6, 1918. Intervener having failed to prosecute said suit and having suffered said suit to be dismissed for want of prosecution is now and estopped and precluded from attempting to prosecute his said claim in this cause. By reason whereof said intervening petition and said supplemental intervening petition and each of them and the claim thereby presented should be dismissed.

4. Railway Company further pleading in bar of said supplemental intervening petition avers that by an order discharging Receivers appointed in this cause made and entered of record January 29, 1918, to which order reference is hereby made to the same effect as if the same were made a part hereof, it is adjudged and decreed that all [fol. 99] claims, demands and liabilities against said Receivers and against the railroad and property delivered by said Receivers to the purchaser thereof and against such purchaser, which then had arisen or might thereafter arise out of said receivership, should be filed in this cause on or before September 1, 1918, and that after said date no further such intervening petition should be permitted in this cause, and that the rights of any claimants who should not on or before such date commence intervention proceedings herein to avail themselves of the remedies provided under said order for their benefit should cease and determine as to such railroad and property and the purchasers thereof; that said claim and demand presented by said supplemental intervening petition, not having been filed herein on or before September 1, 1918, as required by said order, is barred. By reason whereof Railway Company prays that said supplemental intervening petition and the claim thereby presented be dismissed.

5. Railway Company therefore prays by reason of the foregoing that the orders heretofore made in this cause allowing said intervening petition and said supplemental

intervening petition to be filed herein be set aside and for naught held, and that said intervening petition and said supplemental intervening petition and each of them be dismissed.

Railway Company, without waiving its pleas in bar hereinbefore stated, and continuing to insist and to rely upon the same in bar of the further prosecution of said intervening petition, answering said intervening petition, states:

First. It admits the allegations of paragraph 1 thereof.

Second. Answering paragraph 2 of said intervening petition it admits that on January 12, 1914, the Interstate Commerce Commission made an order directing defendant and other carriers named in said order to pay to intervenor damages resulting from the rates charged by said carriers on the shipments of cattle shown in said order, and that the amount so ordered paid is correctly set forth in said paragraph 2 of said intervening petition; denies that intervenor is the lawful assignee in respect of said damages of the consignors referred to in said paragraph 2.

Third. Answering paragraph 3 of said intervening petition it admits the allegations thereof.

Fourth. Answering paragraph 4 of said intervening petition it admits the allegations thereof except the allegation [fol. 100] that the advanced rates therein referred to were unlawful or found to be unlawful by the Interstate Commerce Commission, which allegation it denies.

Fifth. Answering paragraph 5 of said intervening petition it admits the allegations thereof.

Sixth. Answering paragraph 6 of said intervening petition it admits that the matters and things therein stated were made and determined by the said Interstate Commerce Commission as stated in said paragraph.

Seventh. Answering paragraph 7 of said intervening petition it denies that the facts as found by said Interstate Commerce Commission in its said report and opinion were true and correct; denies that the said claims and rights of said owners as shippers and consignors as stated in said paragraph were duly and legally assigned to intervenor; denies that intervenor was at the date of said order of

said Interstate Commerce Commission and now is the legal and equitable owner and holder of said claims and rights and denies that intervener is entitled to recover the same.

Eighth. Answering paragraph 8 of said intervening petition it admits service upon defendant of said order of said Interstate Commerce Commission and that defendant has failed to pay the same or any part thereof; denies that defendant is liable to intervener for the full amount herein claimed or for any part thereof.

Ninth. Answering paragraph 9 of said intervening petition it admits the allegations of the first section, but answering the last section in said paragraph it denies that it has paid a part of the costs taxed against St. Louis and San Francisco Railroad Company in said cause, including \$3,351.00 as part of the attorneys' fees, leaving a balance of \$30,212.31 with interest from August 1, 1916, at six per cent per annum, and also a balance of \$1,235.00 of said costs unpaid; admits that certain sums were paid as attorneys' fees or costs in said cause pursuant to the terms of the bond given by defendant to secure costs.

Tenth. Answering paragraph 10 of said intervening petition it denies that subsequent to the collection of said charges by defendant there was at all times in its treasury down to the date of the appointment of said Receivers an amount of money equal to or in excess of the aggregate of intervener's claim; denies that the gross receipts of defendant from the time of the collection of said charges [fol. 101] to the appointment of said Receivers were in excess of its actual operating expenses, and that since the appointment of said Receivers the gross receipts have continuously been in excess of defendant's actual operating expenses; admits that since the collection of said charges defendant has paid large sums in excess thereof by way of interest on its mortgage indebtedness and for betterments and improvements; admits that when said Receivers were appointed they received from defendant in cash over \$300,000.00; denies that the earnings of defendant, eliminating all items except current receipts and current expenses, from the time said charges were collected to the appointment of said Receivers were largely in excess of defendant's operating expenses; denies that the money so

paid by said shippers in excess of the reasonable rates as fixed by said Interstate Commerce Commission was an illegal exaction, or that said money belonged to said shippers after payment thereof the same as it did before such payment; denies that it was part of the money in the treasury of defendant which passed to said Receivers; denies that said money was not in any way subject to any liens of the mortgages or other instruments of writing executed by defendant; denies that intervener has a claim prior in lien or superior in equity to the liens and claims of any and all of the bondholders, trustees and mortgagees, and other claimants, holding claims and demands against defendant; denies that it became and was the duty of defendant and of said Receivers and of Railway Company to repay to intervener the amount of said judgment, interest and cost.

Eleventh. Answering paragraph 11 of the intervening petition it admits that a portion of Article Ninth of said Final Decree entered in this cause is correctly stated therein, but refers said Final Decree in its entirety, to the Court for the correct interpretation thereof; denies that intervener's claim and judgment, or either of them, are prior in lien or superior in equity to the Refunding Mortgages and the General Lien Mortgages referred to in said Final Decree; admits that Railway Company is the purchaser of the properties of defendant sold under said Final Decree; denies that intervener duly demanded of Railway Company payment of said judgment, interest and costs after the same had been made final by the Supreme Court of the United States.

Twelfth. Answering paragraph 12 of said intervening petition it denies that it had full knowledge and notice prior to the sale of said property and prior to the confirmation of said sale that intervener had his said claim and was prosecuting the same in court; avers that it is without [fol. 102] knowledge that said Receivers had knowledge thereof; denies that defendant, said Receivers or Railway Company, or any of them, had knowledge that intervener's said claim was prior in lien or superior in equity to the liens of said Refunding Bonds, said General Lien Bonds, and all other liens and claims on defendants' property;

avens that intervenor's claim was not prior in lien or superior in equity to the liens of said Refunding Bonds or of said General Mortgage Lien Bonds, or to any other liens or claims against defendants' property; denies that intervenor and his attorneys had no knowledge or notice whatever of the order of this Court requiring persons having any claims or demands against defendant to present and file the same herein within the time therein fixed, or at any time; denies that intervenor and his attorneys had no knowledge or notice whatever of the Final Decree herein when the same was entered or at the time of the sale of defendant's property under said decree; denies that the first knowledge and notice that intervenor and his attorneys, or either thereof, had of said order of this Court, requiring the presentation of claims and of the Final Decree herein was in August 1916; denies that at the hearing upon the confirmation of said sale intervenor's attorneys gave notice to the attorneys for the Reorganization Committee and for the purchasers of said railroad of defendant and for Railway Company and defendant and the attorneys for the Guaranty Trust Company and Bankers Trust Company and all other parties to said cause, that the United States District Court for the Western Division of the Western District of Missouri had given judgment on August 16, 1916, in intervenor's favor against defendant for the amount set forth in the intervening petition, and that intervenor would file the same as prior in lien and superior in equity of the lien and claim of all other persons whomsoever against the property of defendant; denies that when intervenor and his attorneys first learned of said order requiring the presentation of claims against defendant on or before February 1, 1916, said time had expired; admits that intervenor was prosecuting his claim in said United States District Court, but avers that intervenor had full opportunity to file but failed to file said claim in this Court in this cause as required by said orders and decrees of this Court; and denies that the only remedy intervenor had was that prescribed by the Act of Congress as set forth in Section 16 of the Interstate Commerce Act; admits that said Receivers were appointed as such in May, 1913; denies that defendant by its attorneys, who were the same attorneys who [fol. 103] acted for and in behalf of the Receivers of defendant,

appeared in said cause in said United States District Court for the Western Division of the Western District of Missouri and acted and [defendant] the same and took an appeal from the judgment of said Court to the United States Circuit Court of Appeals for the Eighth Circuit and there contested said decision in said District Court, and also appeared and there contested said decision in the United States Supreme Court; admits that a portion of the costs in said litigation secured by defendant's appeal bond, has been paid pursuant to the provisions of said bond; admits that on May 22, 1914, said Receivers were in charge of defendant's property; admits that suit by intervenor against defendant was first commenced at Fort Worth, Texas, and was there dismissed and subsequently instituted in the United States District Court of Kansas City, Missouri, and that a separate suit was commenced in this Court and in this Division against defendant and that said suit was subsequently dismissed; denies that it was due entirely to protracted litigation and determined efforts upon the part of said defendant and of said Receivers and of Railway Company to defeat the rights of intervenor and to have the courts decide that intervenor had no claim against defendant, that intervenor's claim was not reduced to judgment in ample time for intervenor to have intervened in this cause, and to have presented his demand within the time ordered by this Court; denies that the principal object of said order of this Court was to give notice to all persons dealing with defendant's property and to advise this Court of the fact that such a claim did exist, and that that object was fully obtained by the actual notice and knowledge on the part of defendant, of said Receivers, of all parties to this suit, and their attorneys, of the fact that intervenor's claim existed and was being prosecuted in the courts; admits that a principal object of said order was to give notice to all claimants against defendant of the terms and requirements of said order; denies that intervenor in August, 1916, gave personally a written notice to Henry W. Taft and other attorneys representing the Reorganization Committee and the purchasers of the property of defendant of all the facts under which intervenor's said judgment had been obtained and of the subsequent steps by appeal therein taken; admits that no effort of any kind has been made by Railway Company or any of the mortgage bondholders or

others to make any payment or settlement of intervenor's claim; deny that said Trustees and mortgage bondholders [fol. 104] and stockholders, Railway Company and defendant, have each and all had full knowledge and notice of the pendency of Intervener's claim and demand and of the nature thereof.

6. Further answering Railway Company denies that said claim of intervenor is prior in lien or superior in equity to the Refunding Mortgage and General Lien Mortgage of defendant.

7. Further answering said supplemental intervening petition Railway Company denies that upon the appointment of Receivers herein they were by orders of this Court then and thereafter made, directed and ordered to prosecute and defend all suits at law or in equity brought against defendant; avers that it is without knowledge that by direction of said Receivers counsel for Receivers appeared in and conducted the defense of said cause No. 4308 in said District Court at Kansas City, Missouri, and continued to defend the same, taking an appeal from the judgment of said District Court to the Circuit Court of Appeals of the Eighth Circuit and defending said cause in the United States Supreme Court; denies that when said cause No. 4308 was appealed to said Court of Appeals said Receivers obtained and caused to be filed in said cause a cost bond in the sum of \$3,500.00, conditioned among other things that defendant would answer all costs if it failed to make good its appeal; denies that in obtaining said bond said Receivers indemnified the surety company thereon against loss by reason of its execution; admits that the amount of attorney's fees adjudged by said District Court to intervenor and taxed as costs in said cause No. 4308 was \$4,586.32; denies that to relieve the surety on said bond and because of the agreement of indemnity aforesaid said Receivers paid off and discharged the amount of said bond; admits that certain sums were paid as costs in said cause pursuant to the provisions of said bond; denies that there is due and owing to intervenor the sum of \$1,235.13 as a balance of such costs; denies that said attorneys' fees taxed as costs in said cause were incurred and made by the action of said Receivers pursuant to orders of this Court in defending and litigating said cause No. 4308; denies that defendant

and said Receivers should be required and ordered to pay said balance of said attorneys' fees.

8. Further answering Railway Company avers that the charges collected by defendant and sought to be recovered herein were collected during the period of August, 1906, to [fol. 105] November, 1908; that the sums of money so collected passed into the Treasury of defendant and were by defendant long prior to May, 1913, paid out and expended by defendant as a part of the current and ordinary operating expenses of conducting defendant's system of railroads, and that no part of such sums so collected by defendant remained in defendant's treasury or elsewhere under its control at the time said Receivers were appointed in May, 1913, and that no part of said sums of money ever came into the possession of said Receivers but that all thereof was expended as aforesaid long prior to the appointment of said Receivers.

9. Further answering Railway Company avers that the freight charges so collected by defendant in respect of which recovery is herein sought were collected at regular tariff rates then prescribed by the tariffs under which the shipments to which said charges were applied were transported, and that the freight charges so collected by defendant were the only legal charges that defendant could by law collect in respect of such shipments.

10. Further answering Railway Company avers that the orders, judgments and decrees entered in this cause and referred to herein and in the intervening petition and supplemental intervening petition, and particularly said Final Decree, the Order of Sale of defendant's properties and the Order Confirming said Sale, constituted and now constitute a lawful contract between this Court and Railway Company, and if Railway Company be required to pay intervenor's claim or any thereof presented by the intervening petition and supplemental intervening petition, said contract will thereby be violated to the great and irreparable damage of Railway Company, its bondholders and its creditors, with whom Railway Company contracted in reliance upon the terms of its said contract with this Court.

11. Further answering Railway Company avers that by reason of intervenor's failure to file his said claim herein in the time prescribed by the terms of said Interlocutory Decree, as such times were subsequently extended as aforesaid, intervenor is guilty of laches in respect of the presentation of his said claim and should not be heard in a court of equity to now present for allowance and have allowed his said claim.

12. Railway Company further avers that should the Court permit said claim to remain filed and consider and allow the same, that the same should be allowed only as a [fol. 106] general unsecured creditors' claim without priority in lien or superiority in equity over any of the mortgages of Railway Company or of defendant, and that the same should not constitute any charge against the property of Railway Company acquired at the foreclosure sale of defendant's property or otherwise, nor should the same constitute a demand or charge against Railway Company in any other respect than as a general unsecured creditors' claim against defendant.

Wherefore, having fully answered, Railway Company pray (a) that said intervening petition and said supplemental intervening petition and each of them be dismissed, or in the event the Court hears and considers and allows such claims that (b) the same be allowed only as a general unsecured creditors' claim against defendant as aforesaid.

W. F. Evans, M. G. Roberts, E. T. Miller, Solicitors  
for St. Louis-San Francisco Railway Company

## IN UNITED STATES DISTRICT COURT

[Title omitted]

## Consolidated Cause Final

In the Matter of the Intervention of E. B. SPILLER et al.  
Intervening Petition No. 402

ANSWER OF DEFENDANT TO INTERVENING PETITION—Filed  
November 30, 1921

Comes now above-named defendant and by leave of Court files this its answer to the intervening petition of E. B. Spiller, et al., and answering, states:

1. Defendant pleads in bar of the claims and each of them presented by said intervening petition that said claims, and each of them, arose between the period of August, 1906, to November, 1908, and many years prior to May 27, 1913, the date of appointment of Receivers in this cause; that by the terms of the Interlocutory Decree made, entered and filed in this cause, all holders of claims against the defendant herein were required to file the same in this [fol. 107] cause on or before the date fixed therefor in said Interlocutory Decree, which date was subsequently extended by orders made and entered herein to February 1, 1916, and not thereafter; that said claims, and each of them, presented by interveners herein were determined and established by the Interstate Commerce Commission long prior to February 1, 1916, yet none of said claims were filed herein prior to the date last aforesaid. Defendant hereby refers to said Interlocutory Decree and to the orders of this Court extending the time for filing claims as aforesaid as a part of the record in this cause to the same effect as if the same were fully set forth herein. By reason whereof defendant avers that said intervening petition and the claims and each of them presented thereby should be dismissed.

2. Defendant further pleading in bar of the claims and each of them presented by said intervening petition avers that said claims, and each of them, arose prior to the entry of the final Decree herein, to which Final Decree defendant hereby refers to the same effect as if the same were made a

part hereof; that in and by said Final Decree and by Articles Ninth and Tenth thereof it was formally adjudicated and decreed that notice had been given for the presentation in this cause of all claims and demands against defendant of every character and description whatsoever, and that the time for the presentation of said claims and demands had expired, and that no claims or demands of the nature of those presented by said intervening petition filed herein that had not been presented in this cause pursuant to decrees and orders herein made should be enforceable against the Receivers appointed in this cause or against the property sold or any part or portion thereof, or against any purchaser of the same or any part thereof, his successors or assigns, nor should the holder thereof be entitled to the benefits of Article Ninth of said Final Decree, nor should any such claims or demands not so presented be entitled to share in the distribution of any of the proceeds of sale under said Final Decree. By reason whereof defendant prays that said intervening petition and the claims and each of them thereby presented be dismissed.

3. Defendant further pleading in bar of the claims and each of them presented by said intervening petition avers that on January 11, 1915, interveners instituted suit in this Court against defendant upon the same claims now presented, to which suit answer was duly filed on April 12, [fol. 108] 1915, and reply thereto was filed on April 15, 1915; that said cause was subsequently continued from time to time and on March 19, 1917, was dismissed for want of prosecution; that on March 22, 1917, on interveners' motion said dismissal was vacated and said cause again continued from time to time and was finally dismissed by this Court for want of prosecution on December 6, 1918. Intervenors having failed to prosecute said suit and having suffered said suit to be dismissed for want of prosecution are now estopped and precluded from attempting to prosecute their said claims in this cause. By reason whereof said intervening petition and the claims and each of them thereby presented should be dismissed.

4. Defendant therefore prays by reason of the foregoing that the orders heretofore made in this cause allowing said intervening petition to be filed herein be set aside and for

naught held, and that said intervening petition be dismissed.

Defendant, without waiving its pleas in bar hereinbefore stated, and continuing to insist and to rely upon the same in bar of the further prosecution of said intervening petition, answering said intervening petition, states:

First. It admits the allegation of paragraph 1 thereof.

Second. Answering paragraph 2 of said intervening petition it admits that on January 12, 1914, the Interstate Commerce Commission made an order directing defendant and other carriers named in said order to pay to shippers therein named damages resulting from rates charged carriers on shipments of cattle shown in said order, and that the amount so ordered paid and the parties to whom payable are correctly set forth in said paragraph 2 of said intervening petition.

Third. Answering paragraph 3 of said intervening petition it admits the allegations thereof.

Fourth. Answering paragraph 4 of said intervening petition it admits the allegations thereof except the allegations that the advanced rates therein referred to were unlawful or found to be unlawful by the Interstate Commerce Commission, which said allegation it denies.

Fifth. Answering paragraph 5 of said intervening petition it admits the allegations thereof.

Sixth. Answering paragraph 6 of said intervening petition it admits that the matters and thing therein stated were [fol. 109] made and determined by the said Interstate Commerce Commission as stated in said paragraph, except that it denies that said Commission found said rates to be unlawful.

Seventh. Answering paragraph 7 of said intervening petition it denies that the facts as found by said Interstate Commerce Commission in its said report and opinion were true and correct; it denies that interveners are the legal and equitable owners and holders of the claims presented by said intervening petition; and denies that they or any of them are entitled to recover the same.

Eighth. Answering paragraph 8 of said intervening petition it admits service upon defendant of said order of said Interstate Commerce Commission and that defendant has failed to pay the same or any part thereof; denies that defendant is liable to interveners for the full amount herein claimed or for any part thereof.

Ninth. Answering paragraph 9 of said intervening petition it admits the allegations thereof.

Tenth. Answering paragraph 10 of said intervening petition it denies that subsequent to the collection of said charges by defendant there was at all times in its treasury down to the date of the appointment of said Receivers an amount of money equal to or in excess of the aggregate of intervener's claims; denies that the gross receipts of defendant from the time of the collection of said charges to the appointment of said Receivers were in excess of its actual operating expenses, and avers that it is without knowledge that since the appointment of said Receivers the gross receipts have continuously been in excess of defendant's actual operating expenses; admits that since the collection of said charges defendant has paid large sums in excess thereof by way of interest on its mortgage indebtedness and for betterments and improvements; admits that when said Receivers were appointed they received from defendant in cash over \$300,000.00; denies that the earnings of defendant, eliminating all items except current receipts and current expenses, from the time said charges were collected to the appointment of said Receivers were largely in excess of defendant's operating expenses; denies that the money so paid by said Shippers in excess of the reasonable rates as fixed by said Interstate Commerce Commission was an illegal exaction, or that said money belonged to said shippers after payment thereof the same as it did before such payment; denies that it was part of the money in the treasury of defendant which passed to said Receivers; denies that said money was not in any way subject to any liens of the mortgages or other instruments of writing executed by defendant; denies that interveners have a claim prior in lien or superior in equity to the liens and claims of any and all of the bondholders, trustees and mortgagees, and other claimants, holding

claims and demands against defendant; denies that it became and was the duty of defendant and of said Receivers and of St. Louis-San Francisco Railway Company to repay to interveners the amount of said judgment, interest and costs.

Eleventh. Answering paragraph 11 of the intervening petition it admits that a portion of Article Ninth of said Final Decree entered in this cause is correctly stated therein, but refers said Final Decree in its entirety to the Court for the correct interpretation thereof; denies that interveners' claims and judgment, or either of them, are prior in lien or superior in equity to the Refunding Mortgages and the General Lien Mortgages referred to in said Final Decree; admits that St. Louis-San Francisco Railway Company is the purchaser of the properties of defendant sold under said Final Decree; avers that it is without knowledge that interveners duly demanded of St. Louis-San Francisco Railway Company payment of said judgment, interest and costs after the same had been made final by the Supreme Court of the United States.

Twelfth. Answering paragraph 12 of said intervening petition it denies that it had full knowledge and notice prior to the sale of said property and prior to the confirmation of said sale that interveners had their said claims and were prosecuting the same in court; avers that it is without knowledge that said Receivers had knowledge thereof; denies that defendant had knowledge that interveners' said claims were prior in lien or superior in equity to the liens of said Refunding Bonds, said General Lien Bonds, and all other liens and claims on defendant's property; avers that interveners' claims were not prior in lien or superior in equity to the liens of said Refunding Bonds or of said General Mortgage Lien Bonds, or to any other liens or claims against defendant's property; denies that interveners and their attorneys had no knowledge or notice whatever of the order of this Court requiring persons having any claims or demands against defendant to present and file the same herein within the time therein fixed, or at any time; denies that interveners and their attorneys had no knowledge or notice whatever of the Final Decree herein when the same was entered or at the time of the sale of

defendant's property under said decree; denies that the first knowledge and notice that interveners and their attorneys, or any of them, had of said order of this Court requiring the presentation of claims and of the Final Decree herein was in August, 1916; avers that it is without knowledge that at the hearing upon the confirmation of said sale interveners' attorneys gave notice to the attorneys for the Reorganization Committee and for the purchasers of said railroad of defendant and for St. Louis-San Francisco Railway Company and defendant, and the attorneys for the Guaranty Trust Company and Bankers Trust Company and all other parties to said cause, that the United States District Court for the Western Division of the Western District of Missouri had given judgment on August 16, 1916, in interveners' favor against defendant for the amount set forth in the intervening petition, and that interveners would file the same as prior in lien and superior in equity of the lien and claims of all other persons whomsoever against the property of defendant; denies that when interveners and their attorneys first learned of said order requiring the presentation of claims against defendant on or before February 1, 1916, said time had expired; admits that interveners were prosecuting their claims in said United States District Court, but avers that interveners had full opportunity to file but failed to file said claims in this Court in this cause as required by said orders and decrees of this Court; denies that the only remedy interveners had was that prescribed by the Act of Congress as set forth in Section 16 of the Interstate Commerce Act; admits that said Receivers were appointed as such in May, 1913, and thereupon took charge of the railroad property of defendant, but denies that said Receivers took charge of all litigation to which said railroad was a party; denies that the attorneys for said Receivers were the same attorneys who had acted for defendant before the Interstate Commerce Commission in said proceedings, and continued to act as such until said order of said Interstate Commerce Commission; denies that said same attorneys appeared and contested said claims of interveners in case No. 4320 in said District Court of the Western District of Missouri; denies that said same attorneys acted for defendant in entering into the stipulation in said cause, referred to in said paragraph of said intervening petition, and that said at-

torneys appeared and contested the judgment of said United States District Court in the Circuit Court of Appeals and in the United States Supreme Court; admits that a portion of the costs in said litigation, secured by defendant's appeal bond, has been paid pursuant to the provisions of said bond; admits that on May 22, 1914, said Receivers were in charge of defendant's property; admits that suits by in-[fol. 112] terveners against defendant were first commenced at Fort Worth, Texas, and were there dismissed and subsequently instituted in the United States District Court at Kansas City, Missouri, and that a separate suit was commenced in this Court and in this Division against defendant and that said suit was subsequently dismissed; denies that it was due entirely to protracted litigation and determined efforts upon the part of said defendant and of said Receivers and of St. Louis-San Francisco Railway Company to defeat the rights of interveners and to have the courts decide that interveners had no claim against defendant, that interveners' claims were not reduced to judgment in ample time for interveners to have intervened in this cause, and to have presented their demands within the time ordered by this Court; denies that the principal object of said order of this Court was to give notice to all persons dealing with defendant's property and to advise this Court of the fact that such claims did exist, and that that object was fully obtained by the actual notice and knowledge on the part of defendant, of said Receivers, of all parties to this suit, and their attorneys, of the fact that interveners' claims existed and were being prosecuted in the courts; admits that a principal object of said order was to give notice to all claimants against defendant of the terms and requirements of said order; avers that it is without knowledge that interveners in August, 1916, gave personally a written notice to Henry W. Taft and other attorneys representing the Reorganization Committee and the purchasers of the property of defendant of all the facts under which interveners' said judgment had been obtained and of the subsequent steps by appeal therein taken; avers that it is without knowledge that no effort of any kind has been made by St. Louis-San Francisco Railway Company or any of the mortgage bondholders or others to make any payment or settlement of interveners' claims; deny that said Trustees and mortgage bondholders and stockholders, St. Louis-San

Francisco Railway Company and defendants, have each and all had full knowledge and notice of the pendency of interveners' claims and demands of the nature thereof.

6. Further answering defendant denies that said claims of interveners are prior in lien or superior in equity to the Refunding Mortgage and General Lien Mortgage of defendant.

7. Further answering defendant avers that the charges collected by defendant and sought to be recovered herein were collected during the period of August, 1906, to November, 1908; that the sums of money so collected passed [fol. 113] into the Treasury of defendant and were by defendant long prior to May, 1913, paid out and expended by defendant as a part of the current and ordinary operating expenses of conducting defendant's system of railroads, and that no part of such sums so collected by defendant remained in defendant's treasury or elsewhere under its control at the time said Receivers were appointed in May, 1913, and that no part of said sums of money ever came into the possession of said Receivers but that all thereof was expended as aforesaid long prior to the appointment of said Receivers.

8. Further answering defendant avers that the freight charges so collected by defendant in respect of which recovery is herein sought were collected at regular tariff rates then prescribed by the tariffs under which the shipments to which said charges were applied were transported, and that the freight charges so collected by defendant were the only legal charges that defendant could by law collect in respect of such shipments.

9. Further answering defendant avers that by reason of interveners' failure to file their said claims herein in the time prescribed by the terms of said Interlocutory Decree, as such times were subsequently extended as aforesaid, interveners are guilty of laches in respect of the presentation of their said claims and should not be heard in a court of equity to now present for allowance and have allowed their said claims or any of them.

10. Defendant further avers that should the Court permit said claims to remain filed and consider and allow the

same, that the same should be allowed only as general unsecured creditors' claims without priority in lien or superiority in equity over any of the mortgages of St. Louis-San Francisco Railway Company or of defendant.

Wherefore, having fully answered, defendant prays (a) that said intervening petition be dismissed, or in the event the Court hears and considers and allows the claims presented thereby, in whole or in part that, (b) the same be allowed only as general unsecured creditors, claims against defendant as aforesaid.

W. J. Evans, E. T. Miller, Solicitors for Defendant.

[fol. 114] We hereby consent to the filing of the foregoing answer.

November 28, 1921.

S. H. Cowan, D. A. Murphy, John S. Leahy, Walter H. Saunders, Attys. for Intervener.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

Consolidated Cause Final

In the Matter of the Intervention of E. B. SPILLER et al.  
Intervening Petition No. 402

ANSWERING TO PETITION AND SUPPLEMENTAL PETITION—  
Filed April 6, 1921

Comes now St. Louis-San Francisco Railway Company, a party herein and hereinafter referred to as "Railway Company," and answering the intervening petition and supplemental intervening petition of E. B. Spiller, et al., states:

1. Railway Company pleads in bar of the claims and each of them presented by said intervening petition and supplemental intervening petition that said claims, and each of them, arose between the period of August, 1906, to November, 1908, and many years prior to May 27, 1913,

the date of the appointment of Receivers in this cause; that by the terms of the Interlocutory Decree made, entered and filed in this cause, all holders of claims against the defendant herein were required to file the same in this cause on or before the date fixed therefor in said Interlocutory Decree, which date was subsequently extended by orders made and entered herein to February 1, 1916, and not thereafter; that said claims, and each of them, presented by interveners herein were determined and established by the Interstate Commerce Commission long prior to February 1, 1916, yet none of said claims were filed herein prior to the date last aforesaid. Railway Company hereby refers to said Interlocutory Decree and to the orders of this Court [fol. 115] extending the time for filing claims as aforesaid as part of the record in this cause to the same effect as if the same were fully set forth herein. By reason whereof Railway Company avers that said intervening petition and said supplemental intervening petition and the claims and each of them presented thereby should be dismissed.

2. Railway Company further pleading in bar of the claims and each of them presented by said intervening petition and supplemental intervening petition avers that said claims, and each of them, arose prior to the entry of the Final Decree herein, to which Final Decree Railway Company hereby refers to the same effect as if the same were made a part hereof; that in and by said Final Decree and by Articles Ninth and Tenth thereof it was formally adjudicated and decreed that notice had been given for the presentation in this cause of all claims and demands against defendant of every character and description whatsoever, and that the time for the presentation of said claims and demands had expired, and that no claims or demands of the nature of those presented by said intervening petition and supplemental intervening petition filed herein that had not been presented in this cause pursuant to decrees and orders herein made should be enforceable against the Receivers appointed in this cause or against the property sold or any part or portion thereof, or against any purchaser of the same or any part thereof, his successors or assigns, nor should the holders thereof be entitled to the benefits of Article Ninth of said Final Decree, nor should any such claims or demands not so presented be entitled to share in

the distribution of any of the proceeds of sale under said Final Decree. By reason whereof Railway Company prays that said intervening petition and supplemental intervening petition and each of them and the claims and each of them thereby presented be dismissed.

3. Railway Company further pleading in bar of the claims and each of them presented by said intervening petition and supplemental intervening petition avers that on January 11, 1915, interveners instituted suit in this Court against defendant upon the same claims now presented, to which suit answer was duly filed on April 12, 1915, and reply thereto was filed on April 15, 1915; that said cause was subsequently continued from time to time and on March 19, 1917, was dismissed for want of prosecution; that on March 22, 1917, on interveners' motion said dismissal was vacated and said cause again continued from time to time and was finally dismissed by this Court for want of prosecution [fol. 116] on December 6, 1918. Intervenors having failed to prosecute said suit and having suffered said suit to be dismissed for want of prosecution are now estopped and precluded from attempting to prosecute their said claims in this cause. By reason whereof said intervening petition and said supplemental intervening petition and each of them and the claims and each of them thereby presented should be dismissed.

4. Railway Company further pleading in bar of said supplemental intervening petition avers that by an order discharging Receivers appointed in this cause made and entered of record January 29, 1918, to which order reference is hereby made to the same effect as if the same were made a part hereof, it is adjudged and decreed that all claims, demands and liabilities against said Receivers and against the railroad and property delivered by said Receivers to the purchaser thereof and against such purchaser, which then had arisen or might thereafter arise out of said receivership, should be filed in this cause on or before September 1, 1918, and that after said date no further such intervening petition should be permitted in this cause, and that the rights of any claimants who should not on or before such date commence intervention proceedings herein to avail themselves of the remedies provided under said

order for their benefit should cease and determine as to such railroad and property and the purchaser thereof; that said claims and demands presented by said supplemental intervening petition, not having been filed herein on or before September 1, 1918, as required by said order, and each of them, are barred. By reason whereof Railway Company prays that said supplemental intervening petition and the claims thereby presented and each of them be dismissed.

5. Railway Company therefore prays by reason of the foregoing that the orders heretofore made in this cause allowing said intervening petition and said supplemental intervening petition to be filed herein be set aside and for naught held, and that said intervening petition and said supplemental intervening petition and each of them be dismissed.

Railway Company, without waiving its pleas in bar hereinbefore stated, and continuing to insist and to rely upon the same in bar of the further prosecution of said intervening petition and said supplemental intervening petition, answering said intervening petition, states:

First. It admits the allegations of paragraph 1 thereof.

[fol. 117] Second. Answering paragraph 2 of said intervening petition it admits that on January 12, 1914, the Interstate Commerce Commission made an order directing defendant and other carriers named in said order to pay to shippers therein named damages resulting from rates charged by said carriers on shipments of cattle shown in said order, and that the amounts so ordered paid and the parties to whom payable are correctly set forth in said paragraph 2 of said intervening petition.

Third. Answering paragraph 3 of said intervening petition it admits the allegations thereof.

Fourth. Answering paragraph 4 of said intervening petition it admits the allegations thereof except the allegation that the advanced rates therein referred to were unlawful or found to be unlawful by the Interstate Commerce Commission, which said allegation it denies.

Fifth. Answering paragraph 5 of said intervening petition it admits the allegations thereof.

Sixth. Answering paragraph 6 of said intervening petition it admits that the matters and things therein stated were made and determined by the said Interstate Commerce Commission as stated in said paragraph.

Seventh. Answering paragraph 7 of said intervening petition it denies that the facts as found by said Interstate Commerce Commission in its said report and opinion were true and correct; it denies that interveners are the legal and equitable owners and holders of the claims presented by said intervening petition; and denies that they or any of them are entitled to recover the same.

Eighth. Answering paragraph 8 of said intervening petition it admits service upon defendant of said order of said Interstate Commerce Commission and that defendant has failed to pay the same or any part thereof; denies that defendant is liable to interveners for the full amount herein claimed or for any part thereof.

Ninth. Answering paragraph 9 of said intervening petition it admits the allegations thereof.

Tenth. Answering paragraph 10 of said intervening petition it denies that subsequent to the collection of said charges by defendant there was at all times in its treasury down to the date of the appointment of said Receivers an [fol. 118] amount of money equal to or in excess of the aggregate of interveners' claims; denies that the gross receipts of defendant from the time of collection of said charges to the appointment of said Receivers were in excess of its actual operating expenses, and that since the appointment of said Receivers the gross receipts have continuously been in excess of defendant's actual operating expenses; admits that since the collection of said charges defendant has paid large sums in excess thereof by way of interest on its mortgage indebtedness and for betterments and improvements; admits that when said Receivers were appointed they received from defendant in cash over \$300,000.00; denies that the earnings of defendant, eliminating all items except current receipts and current expenses, from the time said charges were collected to the appointment of said Receivers were largely in excess of defendant's operating expenses; denies that the money so paid by said ship-

pers in excess of the reasonable rates as fixed by said Commerce Commission was an illegal exaction, or that said money belonged to said shippers after payment thereof the same as it did before such payment; denies that it was part of the money in the treasury of defendant which passed to said Receivers; denies that said money was not in any way subject to any liens of the mortgages or other intruments of writing executed by defendant; denies that interveners have a claim prior in lien or superior in equity to the liens and claims of any and all of the bondholders, trustees and mortgagees, and other claimants holding claims and demands against defendant; denies that it became and was the duty of defendant and of said Receivers and of Railway Company to repay to interveners the amount of said judgment, interest and costs.

Eleventh. Answering paragraph 11 of the intervening petition it admits that a portion of Article Ninth of said Final Decree entered in this cause is correctly stated therein, but refers to said Final Decree in its entirety to the Court for the correct interpretation thereof; denies that interveners' claims and judgment, or either of them, are prior in lien or superior in equity to the Refunding Mortgages and the General Lien Mortgages referred to in said Final Decree; admits that Railway Company is the purchaser of the properties of defendant sold under said Final Decree; denies that interveners duly demand of Railway Company payment of said judgment, interest and costs after the same had been made final by the Supreme Court of the United States.

[fol. 119] Twelfth. Answering paragraph 12 of said intervening petition it denies that it had full knowledge and notice prior to the sale of said property and prior to the confirmation of said sale that interveners had their said claims and were prosecuting the same in court; avers that it is without knowledge that said Receivers had knowledge thereof; denies that defendant, said Receivers or Railway Company, or any of them, had knowledge that interveners' said claims were prior in lien or superior in equity to the liens of said Refunding Bonds, said General Lien Bonds, and all other liens and claims on defendant's property; avers that interveners' claims were not prior in lien or

superior in equity to the liens of said Refunding Bonds or of said General Mortgage Lien Bonds, or to any other liens or claims against defendant's property; denies that interveners and their attorneys had no knowledge or notice whatever of the order of this Court requiring persons having any claims or demands against defendant to present and file the same herein within the time therein fixed, or at any time; denies that interveners and their attorneys had no knowledge or notice whatever of the Final Decree herein when the same was entered or at the time of the sale of defendant's property under said decree; denies that the first knowledge and notice that interveners and their attorneys, or any of them, had of said order of this Court requiring the presentation of claims and of the Final Decree herein was in August, 1916; denies that at the hearing upon the confirmation of said sale interveners' attorneys gave notice to the attorneys for the Reorganization Committee and for the purchasers of said railroad of defendant and for Railway Company and defendant and the attorneys for the Guaranty Trust Company and Bankers Trust Company and all other parties to said cause, that the United States District Court for the Western Division of the Western District of Missouri had given judgment on August 16, 1916, in interveners favor against defendant for the amount set forth in the intervening petition, and that interveners would file the same as prior in lien and superior in equity of the lien and claim of all other persons whomsoever against the property of defendant; denies that when interveners and their attorneys first learned of said order requiring the presentation of claims against defendant on or before February 1, 1916, said time had expired; admits that interveners were prosecuting their claims in said United States District Court, but avers that interveners had full opportunity to file but failed to file said claims in this Court in this cause as required by said orders and [fol. 120] decrees of this Court; denies that the only remedy interveners had was that prescribed by the Act of Congress as set forth in Section 16 of the Interstate Commerce Act; admits that said Receivers were appointed as such in May, 1913, and thereupon took charge of the railroad property of defendant, but denies that said Receivers took charge of all litigation to which said railroad was a party; denies

that the attorneys for said Receivers were the same attorneys who had acted for defendant before the Interstate Commerce Commission in said proceedings, and continued to act as such until said order of said Interstate Commerce Commission; denies that said same attorneys appeared and contested said claims of interveners in case No. 4320 in said District Court of the Western District of Missouri; denies that said same attorneys acted for defendant in entering into the stipulation in said cause, referred to in said paragraph of said intervening petition, and that said attorneys appeared and contested the judgment of said United States District Court in the Circuit Court of Appeals and in the United States Supreme Court; admits that a portion of the costs in said litigation, secured by defendant's appeal bond, has been paid pursuant to the provisions of said bond; admits that on May 22, 1914, said Receivers were in charge of defendants' property; admits that suits by interveners against defendant were first commenced at Fort Worth, Texas, and were there dismissed and subsequently instituted in the United States District Court at Kansas City, Missouri, and that a separate suit was commenced in this Court and in this Division against defendant and that said suit was subsequently dismissed; denies that it was due entirely to protracted litigation and determined efforts upon the part of said defendant and of said Receivers and of Railway Company to defeat the rights of interveners and to have the courts decide that interveners had no claim against defendant, that interveners' claims were not reduced to judgment in ample time for interveners to have intervened in this case, and to have presented their demands within the time ordered by this Court; denies that the principal object of said order of this Court was to give notice to all persons dealing with defendant's property and to advise this Court of the fact that such claims did exist, and that that object was fully obtained by the actual notice and knowledge on the part of defendant, of said Receivers, of all parties to this suit, their attorneys, of the fact that interveners' claims existed and were being prosecuted in the courts; admits that a principal object of said order was to give notice to all claimants against defendant of the terms [fol. 121] and requirements of said order; denies that inter-

veners in August, 1916, gave personally a written notice to Henry W. Taft and other attorneys representing the Reorganization Committee and the purchasers of the property of defendant of all the facts under which interveners' said judgment had been obtained and of the subsequent steps by appeal therein taken; admits that no effort of any kind has been made by Railway Company or any of the mortgage bondholders or others to make any payment or settlement of interveners' claims; deny that said Trustees and mortgage bondholders and stockholders, Railway Company and defendant, have each and all had full knowledge and notice of the pendency of interveners' claims and demands and of the nature thereof.

6. Further answering Railway Company denies that said claims of interveners are prior in lien or superior in equity to the Refunding Mortgage and General Lien Mortgage of defendant.

7. Further answering said supplemental intervening petition Railway Company denies that upon the appointment of Receivers herein they were by orders of this Court then and thereafter made, directed and ordered to prosecute and defend all suits at law or in equity brought against defendant; avers that it is without knowledge that by direction of said Receivers counsel for Receivers appeared in and conducted the defense of said cause No. 4320 in said District Court at Kansas City, Missouri, or that a stipulation was entered into between counsel for interveners and counsel for said Receivers providing that the result of said cause No. 4320 should abide the final judgment in cause No. 4308 pending in said District Court; avers that it is without knowledge that defendant in said cause No. 4308 acted through counsel for said Receivers in appealing from the judgment entered in said cause to the Circuit Court of Appeals of the Eighth Circuit, and prosecuted said appeal in said last-named Court and defendant said cause in the Supreme Court of the United States; denies that the attorneys' fees allowed as costs by said District Court at Kansas City were incurred and made by the action of said Receivers in defending and litigating said causes Nos. 4320 and 4308; denies that defendant and said Receivers should be required and ordered to pay said costs.

8. Further answering Railway Company avers that the charges collected by defendant and sought to be recovered herein were collected during the period of August, 1906, to [fol. 122] November, 1908; that the sums of money so collected passed into the Treasury of defendant and were by defendant long prior to May, 1913, paid out and expended by defendant as a part of the current and ordinary operating expenses of conducting defendant's system of railroads, and that no part of such sums so collected by defendant remained in defendant's treasury or elsewhere under its control at the time said Receivers were appointed in May, 1913, and that no part of said sums of money ever came into the possession of said Receivers but that all thereof was expended as aforesaid long prior to the appointment of said Receivers.

9. Further answering Railway Company avers that the freight charges so collected by defendant in respect of which recovery is herein sought were collected at regular tariff rates then prescribed by the tariffs under which the shipments to which said charges were applied were transported, and that the freight charges so collected by defendant were the only legal charges that defendant could by law collect in respect of such shipments.

10. Further answering Railway Company avers that the orders, judgments and decrees entered in this cause and referred to herein and in the intervening petition, and supplemental intervening petition, and particularly said Final Decree, the Order of Sale of defendant's properties and the Order confirming said Sale, constituted and now constitute a lawful contract between this Court and Railway Company, and if Railway Company be required to pay interveners' claims or any thereof presented by the intervening petition and supplemental intervening petition, said contract will thereby be violated to the great and irreparable damage of Railway Company, its bondholders and its creditors, with whom Railway Company contracted in reliance upon the terms of its said contract with this Court.

11. Further answering Railway Company avers that by reason of interveners' failure to file their said claim herein in the time prescribed by the terms of said Interlocutory Decree, as such times were subsequently ex-

tended as aforesaid, interveners are guilty of laches in respect of the presentation of their said claims and should not be heard in a court of equity to now present for allowance and have allowed their said claims or any of them.

12. Railway Company further avers that should the Court permit said claims to remain filed and consider [fol. 123] and allow the same, that the same should be allowed only as general unsecured creditors' claims without priority in lien or superiority in equity over any of the mortgages of Railway Company or of Defendant, and that the same should not constitute any charges against the property of Railway Company acquired at the foreclosure sale of defendant's property or otherwise, nor should the same constitute a demand or charge against Railway Company in any other respect than as a general unsecured creditors' claim against defendant.

Wherefore, having fully answered, Railway Company prays (a) that said intervening petition and said supplemental intervening petition and each of them be dismissed, or in the event the Court hears and considers and allows such claims that (b) the same be allowed only as a general unsecured creditors' claim against defendant as aforesaid.

W. F. Evans, M. G. Roberts, E. T. Miller, Solicitors  
for St. Louis-San Francisco Railway Company.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT OF SPECIAL MASTER—Filed February 28, 1921.

[fol. 124] The undersigned Special Master, respectfully reports to this Honorable Court, that the above-entitled companion interventions were jointly heard by him upon the pleadings, the evidence adduced including the stipulation as to facts filed, and the briefs of counsel who appeared in behalf of the respective parties.

The Special Master attaches hereto a synopsis of the pleadings, finding of facts and conclusions of law, and prays that the same be taken as a part of this report as fully as if herein set out at length.

In pursuance thereof, the Special Master recommends to this court as follows:

(1) That the court enter judgment herein in favor of the intervening petitioner, E. B. Spiller, in the sum of \$30,-212.31, with interest thereon at six per cent per annum from August 1, 1916, until paid, being the amount, other than attorneys' fees taxed as costs, awarded to said intervenor by the judgment of the District Court of the United States for the Western Division of the Western Judicial District of Missouri, in case No. 4308 of E. B. Spiller, plaintiff vs. St. Louis & San Francisco Railroad Company, defendant; and that this court enter its further judgment in favor of intervenor, E. B. Spiller, in the sum of \$1,235.13, being the unpaid balance of attorneys' fees allowed to said intervenor, as plaintiff in said cause, and [fol. 125] taxed as costs, the total amount of this judgment, namely, \$31,447.44 to be adjudged as prior in lien and superior in equity to the refunding mortgage and the general lien mortgage of the St. Louis & San Francisco Railroad Company, and directed to be enforced against the property conveyed to the St. Louis-San Francisco Railway Company, as assignee of the purchasers at the foreclosure sale heretofore had in this consolidated receivership cause.

The Special Master further recommends to this court as follows:

(2) That the court enter judgment herein in favor of the intervening petitioners, E. B. Spiller, Bailey & Townsend, Baker & Brown, W. M. Barringer, Battles & Denton, G. W. Battles, F. N. Belshe, Boedecker & Ball, T. J. Brown, Cain & Kelley, Thomas Chism, Tom Durant, S. H. Elliott, R. M. Evans, C. J. Fogleman, R. L. Hall, J. R. Hamilton, Haynes & Hogenkamp, Hansley & Brumit, Hodges & Payne, C. W. Jackson, R. H. Jackson, James & Cardin, James & Jamison, J. E. Kelley, Kimble & Co., King Bros., Lance & Charley, Murrell & Clary, W. L. Payne & Son, J. J. Pickens, F. B. Severs, T. J. Smith, Cal Stewart, R. W. Stubblefield, Three Circle Ranch, N. T. Trout, Frank Vincent, Wall & McFish, O. G. Warren, H. Willis, W. D. Woods, J. A. Wynne and Yohoko Farm & Stock Company, in the sum of \$365.97, with interest thereon at six per cent per annum from August 1, 1916, until paid, being the amount, other than attorneys'

fees taxed as costs, awarded to said interveners by the judgment of the District Court of the United States for the Western Division of the Western Judicial District of Missouri, in case No. 4320 of E. B. Spiller et al., plaintiffs vs. St. Louis & San Francisco Railroad Company, defendant; and that this court enter its further judgment in favor of interveners, E. B. Spiller, Bailey & Townsend, Baker & Brown, W. M. Barringer, Battles & Denton, G. W. Battles, F. N. Belshe, Boedecker & Ball, T. J. Brown, Cain & Kelley, Thomas Chism, Tom Durant, S. H. Elliott, R. M. Evans, C. J. Fogleman, R. L. Hall, J. R. Hamilton, Haynes & Hogenkamp, Hensley & Brumit, Hodges & Payne, G. W. Jackson, R. H. Jackson, James & Cardin, James & Jamison, J. E. Kelley, Kimble & Co., King Bros., Lance & Charley, Murrell & Clary, W. L. Payne & Son, J. J. Pickens, F. B. Severs, T. J. Smith, Cal Stewart, R. W. Stubblefield, Three Circle Ranch, N. T. Trout, Frank Vincent, Wall & McFish, O. G. Warren, H. Willis, W. D. Woods, J. A. Wynne, and Yohoko Farm & Stock Company, in the sum of \$365.29, [fol. 126] being the amount of attorneys' fees allowed to said interveners, as plaintiffs in said cause, and taxed as costs, the total amount of this judgment, namely, \$4,018.36, to be adjudged as prior in lien and superior in equity to the refunding mortgage and the general lien mortgage of the St. Louis & San Francisco Railroad Company, and directed to be enforced against the property conveyed to the St. Louis-San Francisco Railway Company, as assignee of the purchasers at the foreclosure sale heretofore had in this consolidated receivership cause.

The Special Master further recommends that the costs of this proceeding shall be taxed against the defendants herein.

Respectfully submitted,

Thomas T. Fauntleroy, Special Master.

#### Synopsis of Pleadings on E. B. Spiller Intervention

#### Intervening Petition

This proceeding was instituted by E. B. Spiller, a citizen and resident of the State of Texas, against the various parties complainant and defendant in the above entitled causes

and against the St. Louis-San Francisco Railway Company, the assignee of the purchasers at foreclosure sale in the consolidated receivership of the St. Louis & San Francisco Railroad Company, and against the receivers of the said St. Louis & San Francisco Railroad Company, appointed, qualified and acting in said receivership cause, by the filing on December 2, 1920, of an intervening petition upon leave of court granted on formal application, due notice and full hearing. On March 10, 1921, said intervenor filed a separate and supplemental intervening petition. On April 6, 1921, the St. Louis-San Francisco Railway Company filed its answer jointly to said intervening petition and supplemental intervening petition, this party being hereinafter designated as "Railway Company." On November 30, 1921, the St. Louis & San Francisco Railroad Company filed its answer to said intervening petition, this party being hereinafter designated as "Railroad Company."

## I

The intervening petition charges that the Railroad Company was at all times mentioned a common carrier engaged in the transportation of cattle from points in Texas, Oklahoma and New Mexico, to primary markets of live stock at Kansas City, St. Joseph, St. Louis, Chicago, New Orleans [fol. 127] and other points and was a party jointly or severally to the tariffs, rates, fares and charges between the points named and itemized in appendix "A" to an order of the Interstate Commerce Commission hereinafter referred to and made an exhibit to said intervention.

The allegations of paragraph 1 are admitted by the separate answers of the Railway Company and the Railroad Company.

## II

That on January 12, 1924, the Interstate Commerce Commission, after full hearing, in case No. 732, directed the Railroad Company and other carriers named in said order to pay to intervenor damages on account of charging the shippers named as consignors in said report and order unjust and unreasonable rates on shipments of cattle, shown in said Appendix "A" in the amounts therein named.

Said unreported opinion of the Interstate Commerce Commission being numbered A-583 and attached as an exhibit "A" to said intervention, set forth the unreasonable rates paid, the rates established by the Interstate Commerce Commission, the shipments made at said unreasonable rates, and the amount of principal and interest as damages which the railroad Company and other carriers were directed severally to pay to intervener, the amount adjudged in favor of intervener as assignee and against the Railroad Company being \$27,682.75 as principal, \$2,529.56 as interest, \$3,021.23 as attorneys' fees, and costs and interest at six per cent (6%) from August 1st, 1916.

The separate answers of the Railway Company and the Railroad Company admit the entry of the Interstate Commerce Commission order of January 12, 1914, in the amount pleaded, but deny that intervenor is the lawful assignee in respect of said damages of the consignors referred to in said paragraph 2.

### III

That the damages so adjudged arose from the fact that in 1903 the Railroad Company and other connecting carriers named as defendants in said cause No. 732 and being engaged in transporting live stock between the points of origin and markets of destination set forth in Appendix "A," about March, 1903, advanced said live stock transportation rates in amounts specified in Appendix "A," which advanced rate the said consignors were compelled to pay to the Railroad Company and which advanced rates were adjudged by the Interstate Commerce Commission to [fol. 128] be unjust and unreasonable and formed the basis of the judgment in favor of intervener as assignee of said consignors, as pleaded in paragraph 2.

The separate answers of the Railway Company and the Railroad Company admit the allegations of paragraph 3.

### IV

That on February 10, 1904, The Cattle Raisers' Association of Texas, a voluntary organization of Southwestern live stock producers and shippers, filed complaint before the Interstate Commerce Commission against the Railroad

Company and other connecting carriers, maintaining said advanced rates, alleging that said advanced rates were unjust and unreasonable; that the Commission, after full hearing on August 16, 1905, by report and opinion in said cause No. 732, 11 I. C. C. 298, adjudged said advanced rates to be unjust and unreasonable, violative of Section 1 of the Interstate Commerce Act and therefore unlawful, but that no formal order was entered by the Commission because said complaint applied for more specific findings of fact, which application was held under advisement by the Commission until after the passage of the amendment to the Interstate Commerce Act known as the Hepburn Law, and effective August 28, 1906. That said advanced rates remained in effect until November 17, 1908.

The separate answers of defendants Railway Company — Railroad Company admit all the allegations of paragraph 4, save that they deny that the advanced rates were unlawful or found to be unlawful by the Commission.

## V

That on August 29, 1906, the complainant, Cattle Raisers' Association of Texas, in behalf of itself and of its members and of others engaged in raising, buying and shipping cattle between said points of origin and market filed its petition with the Interstate Commerce Commission reaffirming the allegations of its petition of February 1, 1904, and praying that the Commission proceed with such further hearing as it might deem necessary respecting the unjustness and unreasonableness of said advanced rates, that the Commission prescribe just and reasonable rates and award reparation for accrued damages; that after issue joined and full hearing, on April 14, 1908, the Commission by report and opinion, 13 I. C. C. 419, adjudged the advances and the advanced rates to be unjust and unreasonable and prescribed and fixed as just and reasonable the rates previously in effect, [fol. 129] all of said reports, opinions, orders and supplemental orders being incorporated with the intervention as exhibits.

The separate answers of defendants Railway Company and Railroad Company admit all the allegations of paragraph 5.

## VI

That the parties named as consignors in Appendix "A", as owners, shipped the cattle between the points and paid therefor to defendant Railroad Company and other named carriers, the advanced rates thereafter adjudged by the Commission to be unjust, unreasonable and unlawful, at the dates and in the amounts, all as set forth in said Appendix "A"; and that said shippers were thereby damaged to the extent of the unjust and unreasonable portion of said rates, as shown by the difference between "Rate Paid" and "Rate Ordered" in Appendix "A".

The answer of defendant Railway Company admits "that the matters and things therein stated were made and determined by the said Interstate Commerce Commission as stated in said paragraph 6."

The answer of defendant Railroad Company makes the same admission, but denies that the Commission found said rates to be unlawful.

## VII

That the shippers named in Appendix "A" as consignors and E. B. Spiller as Secretary of the Cattle Raisers' Association of Texas and his predecessor in office, H. E. Crowley, duly filed with the Commission on account of said shippers and on account of Spiller and Crowley, as assignees, reparation claims in the amounts of unlawful charges adjudicated by the Commission in its report and order of January 12, 1914; that the claims and rights of said shippers were duly assigned to E. B. Spiller who was, at the date of said order, and now is, the legal and equitable owner thereof and entitled to recover the resultant damages, together with interest and attorneys' fees, and that the facts found by the Commission in said reports and opinions were true and correct.

The separate answers of Railway Company and Railroad Company deny the correctness of the findings of the Commission, deny the assignment to intervener of the claims and rights of said shippers and deny the title of intervener as such assignee.

[fol. 130]

## VIII

That said reparation order of the Commission was duly served upon the Railroad Company, which has failed and refused to pay and is now liable to intervener in the full amount of said judgment.

The separate answers of Railway Company and Railroad Company admit service of said reparation order upon the Railroad Company and that it has failed to pay the same either in whole or in part, but deny all liability of the Railroad Company to intervener thereunder.

## IX

That within one year from January 12, 1914, intervener filed his petition in the United States District Court at Kansas City against the Railroad Company and other carriers, pleading the aforesaid facts and praying judgment against the Railroad Company in the amount of said reparation award; that the railroad Company was duly served with process and appeared; that upon a jury-waived trial before the court on August 16, 1916, judgment was rendered for intervener and against the Railroad Company in \$30,212.31 with interest at six per cent from August 1, 1916, and for \$3,021.23 as attorneys' fees, taxed as costs, said judgment being attached as an exhibit to the intervention; that no part of said judgment was paid and that the Railroad Company and other carriers appealed therefrom to the United States Circuit Court of Appeals for the Eighth Circuit, which tribunal on March 11, 1918, reversed said judgment and remanded said cause for a new trial in the District Court, a copy of said judgment being attached as an exhibit to the intervention; that in due time, intervener appealed by certiorari to the United States Supreme Court, which tribunal on May 17, 1920, reversed the judgment of said Court of Appeals, affirmed the judgment of said District Court, with costs, and remanded the cause, a copy of said judgment being attached as an exhibit to the intervention; that on July —, 1920, intervener duly applied to said District Court for allowance of additional attorneys' fees, occasioned by said appeal, which application was sustained on July 10, 1920, the total at-

torneys' fees adjudged against the Railroad Company and taxed as costs in said cause amounting to \$4,586.32, a copy of said order being attached as an exhibit to the intervention; that the Railroad Company has paid a part of the costs so taxed, including \$3,351.00 as part of said attorneys' fees, leaving an unpaid balance of \$30,212.31 with interest [fol. 131] at six per cent from August 1, 1916, and also unpaid balance of costs amounting to \$1,235.00.

The separate answer of Railway Company admits the allegations of paragraph 9, save that it denies that it has paid a part of the costs taxed against the Railroad Company, including \$3,351.00 as part of attorneys' fees, leaving a balance of \$30,212.31, with interest at six per cent from August 1, 1916, and also a balance of \$1,235.00 unpaid costs; said answer admits that certain sums were paid as attorneys' fees or costs in said cause, pursuant to the term of the bond given by defendant to secure costs.

The separate answer of defendant Railroad Company admits the allegations of paragraph 9, save that it denies that it has paid a part of the costs taxed against it in said cause, including \$3,351.00 as part of the attorneys' fees.

## X

That subsequent to the collection by Railroad Company of said excess charges, at all times down to the appointment of Thomas H. West and Benjamin L. Winchell as its receivers, it had in its treasury an amount of money equal to or in excess of said total excess charge collections; that during the same period the gross receipts of Railroad Company exceeded its actual operating expenses and that this condition has continued since the appointment of receivers; that since the collection of said excess charges, the Railroad Company has paid large sums in excess thereof as interest on mortgage indebtedness and has expended large sums greatly in excess of said excess charges for betterments and improvements; that upon appointment, said receivers received from Railroad Company as shown by their filed inventory over \$300,000.00 in cash; that the earnings of Railroad Company from time of collection of said excess charges down to appointment of receiver were largely in excess of operating expenses, eliminating all

items except current receipts and current expenses; that the moneys paid by shippers in excess of the rates adjudged by the Commission to be reasonable constituted an illegal exaction and belonged to the shippers after payment as it did before; that it was a part of the money in the treasury of the Railroad Company which passed to the receivers; that said money was not subject to the liens of mortgages or other written obligations of Railroad Company and that intervenor's claim is prior in lien and superior in equity to the liens and claims of all bondholders, trustees, [fol. 132] mortgagees, and other claimants against Railroad Company; that it became and was the duty of Railroad Company and of its receivers and of Railway Company to repay to intervenor the amount of said judgment, interest, costs, and attorneys' fees.

The separate answer of Railway Company denies that subsequent to the collection of said charges by Railroad Company there was at all times in its treasury down to the date of the appointment of said receivers an amount of money equal to or in excess of the aggregate of intervenor's claim; denies that the gross receipts of Railroad Company from the time of the collection of said charges to the appointment of said receivers were in excess of its actual operating expenses, and that since the appointment of said receivers the gross receipts have continuously been in excess of Railroad Company's actual operating expenses; admits that since the collections of said charges Railroad Company has paid large sums in excess thereof by way of interest on its mortgage indebtedness and for betterments and improvements; admits that when said receivers were appointed they received from Railroad Company in cash over \$300,000.00; denies that the earnings of Railroad Company, eliminating all items except current receipts and current expenses, from the time said charges were collected to the appointment of said receivers were largely in excess of Railroad Company's operating expenses; denies that the money so paid by said shippers in excess of the reasonable rates as fixed by said Interstate Commerce Commission was an illegal exaction, or that said money belonged to said shippers after payment thereof the same as it did before such payment; denies that it was part of the money in the treasury of Railroad Company which passed to said Re-

ceivers; denies that said money was not in any way subject to any liens of the mortgages or other instruments of writing executed by Railroad Company; denies that intervener has a claim prior in lien or superior in equity to the liens and claims of any and all of the bondholders, trustees and mortgagees, and other claimants, holding claims and demands against Railroad Company; denies that it became and was the duty of Railroad Company and of said receivers and of Railway Company to repay to intervener the amount of said judgment, interest and costs.

The separate answer of Railroad Company differs from the foregoing only in alleging a lack of knowledge as to whether the gross receipts have exceeded operating expenses since the appointment of receiver.

[fol. 133]

## XI

That article 9 of the final decree entered in the receivership cause provides that the purchaser at foreclosure sale, his successors and assigns, shall take and receive the property foreclosed upon express condition to pay, satisfy and discharge any unpaid claims against Railroad Company which have been or shall be admitted or adjudged to be prior in lien or superior in equity to the refunding mortgage or the general lien mortgage and that upon refusal to so pay, the claimant, upon notice, may apply to the District Court for enforcement of his claim against the property sold; that "all questions not hereby disposed of are reserved for future adjudication;" that by order entered January 29, 1918, the court reserved jurisdiction to determine questions and rights thereafter presented; that intervener's judgment is prior in lien and superior in equity to the refunding and general lien mortgages; that Railway Company is the purchaser of the properties of Railroad Company under foreclosure sale, whereby it acquired all moneys in the hands of the receivers; that intervener has made due demand upon Railway Company, which has refused to pay; that intervener has given due notice to Railway Company of its intention to file this intervention.

The separate answer of Railway Company admits the portions of the final decree as pleaded, but refers the entire decree to the court for interpretation, denies that in-

intervener's judgment is prior in lien or superior in equity to said refunding and general lien mortgages; admits that Railway Company is the purchaser under said decree; denies that intervener has made due demand.

The separate answer of Railroad Company is identical with the foregoing, save that it avers a lack of knowledge as to demand alleged by intervener.

## XII

That Railroad Company, its receivers, all parties to this cause, and Railway Company prior to foreclosure sale had full knowledge and notice of intervener's claim as prosecuted, and that said claim was prior in lien and superior in equity to said refunding and general lien mortgages and all other liens and claims against Railroad Company; that neither intervener nor his attorney had knowledge or notice of orders fixing the time for filing of claims herein, nor of the final decree in this cause, prior to the presentation [fol. 134] in August, 1916, of objections to confirmation of sale, at which hearing intervener's attorneys appeared and notified the attorneys for the Reorganization Committee and for the purchaser and for Railway Company and for Railroad Company and for the Guaranty Trust Company and for the Bankers' Trust Company, and for all other parties, of the judgment entered August 16, 1916, in the Federal Court at Kansas City, and that intervener would claim the same to be prior in lien and superior in equity to all other liens and claims against Railroad Company's property; that intervener and his attorneys first learned of the orders fixing the time for claims after said time had expired on February 1, 1916; that intervener prosecuted his claim in the Federal Court at Kansas City because required so to do by Section 16 of the Interstate Commerce Act, that being the only remedy open to intervener; that the Commission's order of January 12, 1914, was duly served upon Railroad Company; that receivers were appointed in this cause in May, 1913, and they, therefore, had knowledge of the judgment obtained by intervener against Railroad Company, which appeared in said cause by the same attorneys acting for said receivers, actively defended the same, took an appeal to the Court of

Appeals and prosecuted the same vigorously and likewise appeared before the Supreme Court; that Railroad Company gave an appeal bond for costs and that Railway Company has paid to intervener a part of said costs; that receivers were appointed herein on petition of bondholders on May 22, 1914, and were in charge of Railroad Company's property when intervener brought suit at Fort Worth, Texas, to recover under reparation award; that said suits were dismissed because all the railroad companies, including Railroad Company, objected to the jurisdiction and to avoid question, intervener filed said suit at Kansas City against all carriers affected and a separate suit in this court against Railroad Company, which last suit was dismissed after judgment rendered in the joint suits at Kansas City; that service of process in the suit at Kansas City was first had upon agents of the receivers and the Railroad Company appeared specially to object thereto; whereupon further service was had upon Railroad Company; that the efforts of Railroad Company and its receivers and Railway Company to defeat intervener's claim prevented its reduction to judgment in time for presentation of said demand in this cause within the time prescribed by this court; that the object of said order, fixing time for claims, was fully attained by the actual notice and knowledge received [fol. 135] by Railroad Company, its receivers, and all parties and attorneys in this cause, concerning the existence and prosecution of intervener's claim; that at the August, 1916, hearing, intervener gave full notice of his claim to attorneys for Reorganization Committee and to the purchasers of the property; that no person or party to this cause has offered to make any payment or settlement with intervener on account of his claim and that Railway Company, Railroad Company, its trustees, bondholders and stockholders have had full knowledge and notice of the fact and nature of intervener's claim.

The prayer is for permission to file the intervention, for an order of reference, and for judgment in \$30,212.31, with interest at six per cent from August 1st, 1916, for costs, including \$1,235.00 attorney's fees, for adjudication as prior in lien and superior in equity to the refunding and general lien mortgages of Railroad Company, and for en-

forcement, unless paid, against the property sold to Railway Company.

The separate answer of Railroad Company denies knowledge and notice of intervener's claim prior to foreclosure sale and confirmation; pleads a lack of knowledge as to the knowledge thereof by receivers; denies that it or its receivers or the Railway Company had knowledge of the paramount priority of intervener's claim and denies the fact of same; denies that intervener and his attorneys did not learn of court orders prescribing time for claims soon enough to comply; denies that intervener and his attorneys had no knowledge or notice of the final decree prior to its entry or the sale thereunder; denies that they first received such knowledge and notice in August, 1916; denies the giving by intervener's attorneys of the notices alleged on that date; denies that intervener and attorneys first learned of order regarding claims after their time limit had expired; admits that intervener was prosecuting his suit at Kansas City; but avers he had full opportunity to file claim in this cause; denies that intervener's only remedy was that prescribed by Section 16 of the Interstate Commerce Act; admits that receivers were appointed in May, 1913; denies that Railroad Company, by the same attorneys who acted for the receivers, defended the suit at Kansas City and appeared for Railroad Company in the appellate proceedings; admits that a portion of the costs have been paid; admits that on May 22, 1914, the receivers were in charge; admits the institution and dismissal of the Fort Worth suit, the institution of suit at Kansas City, the institution and dismissal of suit in this court; denies that intervener's failure to file demand in this cause was due to the efforts of Railroad Company, its receivers and Railway Company; denies that the object of the order prescribing the time for claims has been satisfied by the actual notice and knowledge alleged; denies the notices alleged to have been given by intervener at the August, 1916, hearing; admits that no effort has been made to settle intervener's claim; denies that the mortgage trustees, bondholders, stockholders, Railway Company, and Railroad Company have had full knowledge and notice of the pendency and nature of intervener's claim.

The separate answer of Railroad Company is identical with foregoing, save that it confines to Railroad Company its specific denial of knowledge of the priority of intervenor's claim and that it avers a lack of knowledge as to the notices alleged to have been given at the August, 1916, hearing; and that it avers a lack of knowledge as to efforts made by Railway Company or others in settlement of intervenor's claim.

Both answers specifically deny that intervenor's claim is prior in lien or superior in equity to the refunding mortgage and general lien mortgage of Railroad Company.

### Supplemental Intervening Petition

The supplemental intervening petition filed March 10th, 1921, seeks recovery of the attorneys fees adjudged in the Kansas City suit, upon the following additional grounds for preferential allowance:

That the Receivers appointed in this cause were formally directed to defend all suits against Railroad Company, including intervenor's Kansas City suit that by direction of the Receiver their counsel defended said suit for Railroad Company and appealed same to Court of Appeals and defended same in the Supreme Court; that the receivers furnished the appeal bond for Railroad Company in \$3,500, and indemnified surety against loss; that the adjudged attorneys fees, taxed as costs, amounted to \$4,586.32; that to relieve the surety under indemnity agreement the receivers paid the Clerk's costs and \$3,351.19 of attorneys' fees leaving unpaid balance due of \$1,235.13; that said attorneys' fees were costs incurred through receivers litigation of the cause and that Railroad Company and receivers should be required to pay said balance of attorneys' fees remaining unpaid. The prayer is for order on receivers to pay said balance of \$1,235.13.

[fol. 137] The separate answer of Railway Company denies the alleged order of Court for defense by receivers of suits against Railroad Company, pleads a lack of knowledge as to receivers having directed their counsel to defend said cause; denies that receivers procured cost bond on appeal, and that they indemnified surety; admits amount of

attorneys' fees adjudged as \$4,586.32; denies that receivers paid costs to extent of bond; admits payment of certain costs; denies that balance of \$1,235.13 as unpaid costs remains; denies that attorneys' fees were occasioned by action of receivers and that Railroad Company and receivers should be required to pay same.

### General Defenses

The Seperate Answer of Railway Company sets up four pleas in bar.

1. That intervener's claim arose between August 1906 and November 1908; that receivers of Railroad Company were appointed herein May 27th, 1913; that the interlocutory decree herein prescribed the time for filing claims which was subsequently extended to February 1st, 1916; that intervener's claim was established by the Interstate Commerce Commission long prior to said date but was never filed in this cause.

2. That intervener's claim arose prior to entry of Final Decree herein which decree adjudged that notice for presentation of claim had been given; that time of presentation had expired; and that no claim of this character which had not been filed should be enforceable against the receivers or the purchasers of the property, nor entitled to the benefits of Article IX, nor allowed to share in distribution of proceeds of sale.

3. That intervener instituted suit on this same claim in this Court on January 11, 1915, whereunder issue was joined; that the cause was continued from time to time, dismissed on March 19th, 1917 for want of prosecution, reinstated March 22nd, 1917 on Intervener's motion, and finally dismissed for want of prosecution December 6th, 1918; and that intervener's failure to maintain and prosecute said suit estops and precludes the prosecution of the present demand.

4. That the receivers were discharged January 29th, 1918 by an order adjudging that all claims against the receivers or the Railroad property arising out of the re-[fol. 138] ceivership should be filed by September 1st, 1918

and not thereafter, and that the rights of any claimants failing to so file interventions should cease and determine as to said Railroad property and its purchaser; and that intervenor's failure to comply with said order bars this action.

The separate answer of Railway Company further avers that the charges sought to be recovered were collected between August, 1906 and November 1908; that said moneys were disbursed by Railroad Company for current operating expenses long prior to May, 1913 and that no part of such sums remained in the treasury and ever passed into the possession of the receivers.

That the charges in question were collected at regular tariff rates then prescribed by duly published tariffs applicable to such shipment and were the only legal charges which Railroad Company could lawfully collect.

That the final decree, order of sale and order confirming sale, as entered herein, constitute a contract between this Court and Railway Company which would be violated by any judgment entered herein for intervenor, to the damage of Railway Company its bondholders and creditors.

That intervenor's failure to file claims herein within time prescribed constitutes laches barring its present consideration.

That in any event, intervenor's claim should be allowed only as that of a general unsecured creditor without priority over the mortgage indebtedness and without constituting a charge against the property of Railway Company acquired at the foreclosure sale of Railroad Company.

The separate answer of Railroad Company differs from the foregoing only in the following respects:

That it omits the fourth plea in bar above stated; that it does not purport to answer and is not directed against the supplemental intervening petition of intervenor; and that it omits to allege the defense claiming that the court receivership orders constitute a contract between the court and Railway Company, which would be violated by allowance of intervenor's claim.

Both answers pray for dismissal of the intervention or, in the alternative, that the same be allowed only as a general unsecured creditor's claim against Railroad Company.

[fol. 139] Synopsis of Pleadings of E. B. Spiller, et al.  
Intervention

This proceeding was instituted by E. B. Spiller, Bailey & Townsend, Baker & Brown, W. M. Barringer, Battles & Denton, G. W. Battles, F. N. Belshe, Boedecker & Ball, T. J. Brown, Cain & Kelley, Thomas Chism, Tom Durant, S. H. Elliott, R. M. Evans, C. J. Fogleman, R. L. Hall, J. R. Hamilton, Haynes & Hogenkamp, Hensley & Brumit, Hodges & Payne, G. W. Jackson, R. H. Jackson, James & Cardin, James & Jamison, J. E. Kelley, Kimble & Co., King Bros., Lance & Charley, Murrell & Clary, W. L. Payne & Son, J. J. Pickens, F. B. Severs, T. J. Smith, Cal Stewart, R. W. Stubblefield, Three Circle Ranch, N. T. Trout, Frank Vincent, Wall & McFish, O. G. Warren, H. Willis, W. D. Woods, J. A. Wynne, Yohoko Farm & Stock Co., against the various parties complainant and defendant in the above entitled cause and against the Railway Company and against the receivers of the Railroad Company by the filing on December 2nd, 1920 of an intervening petition upon leave of Court granted upon formal application, due notice and full hearing. On March 10th, 1921 said interveners filed a separate and supplemental intervening petition; on April 6, 1921 the Railway Company filed its answer jointly to said intervening petition and supplemental intervening petition; and on November 30th, 1921 the Railroad Company filed its answer to said intervening petition. The pleadings upon this intervention so closely parallel those filed upon the intervention of E. B. Spiller alone that reference may properly be made to the full synopsis upon that intervention as hereinbefore set forth and attention now directed only to the points of variance. Aside from E. B. Spiller, the remaining interveners sue directly in their personal rights as consignors of live stock seeking to recover individually the excess of charges collected upon their individual shipments together with interest thereon from June 15, 1914, attorneys' fees and costs. E. B. Spiller sues as assignee of five shippers who assigned their claims to him after rendition of the reparation award by the Interstate Commerce Commission. The historical allegations reciting the various steps taken following publication of the advanced live stock rate by the carriers are substan-

tially identical with those given in connection with the E. B. Spiller intervention down to and including the recovery of judgment by interveners in the Federal Court at Kansas City. Thereupon, the intervening petition avers, the parties agreed that said cause should remain in statu quo and [fol. 140] abide the decision of the companion cause wherein E. B. Spiller alone was plaintiff and wherein an appeal was taken to the Court of Appeals and certiorari subsequently granted to the Supreme Court. The present intervention recites the history of the appeals taken in said companion case and resulting, by virtue of said agreement, in the judgment being made final in the case wherein these interveners were the plaintiffs. Absent such appeal, this intervention naturally lacks allegations as to application being made for the allowance of additional attorneys' fees. The prayer is for allowance of the total of intervener's claim, \$3,652.97 with interest at 6% from August 1st, 1916, attorney's fees \$365.29 and costs. The separate answers of Railway Company and Railroad Company are substantially identical with those filed upon the companion intervention of E. B. Spiller, save for an allegation of lack of knowledge by defendant Railway Company as to any stipulation being entered into between counsel for interveners and counsel for receivers that intervener's Kansas City suit should be stayed to abide the result in the companion and appealed case.

#### Findings of Fact

In 1903, the defendant, St. Louis & San Francisco Railroad Company, together with other railroad companies, advanced their rates on cattle shipments from the State of Texas and other states in the southwest to Kansas City, Chicago, St. Louis and other primary markets, three cents per hundred pounds, duly publishing the new rate in accordance with the Act to Regulate Interstate Commerce.

In February, 1904, the Cattle Raisers Association of Texas, by a petition filed with the Interstate Commerce Commission, challenged this advance in the rates as unreasonable, unjust and unlawful. On August 16, 1905, the Interstate Commerce Commission (11 I. C. C. Reports) after a full hearing upon due notice to the defendant and other carriers, sustained the contentions of the Cattle

Raisers Association of Texas and found that the rate, to the extent of the increase—to-wit, three cents per hundred pounds, was unreasonable, unjust and therefore unlawful, and that the defendant and said other carriers should be required to desist from the maintenance of that rate. The finding and conclusion of the Interstate Commerce Commission in that regard is as follows:

“It has been found that the advances made during the year 1903, as shown by the appendix, were unjust and unreasonable, and that the present rates are unjust and un-[fol. 141] reasonable by the amount of said advances. The defendant should, therefore, be required to cease and desist from the maintenance of these rates \* \* \*. All questions of reparation are reserved.”

On November 18, 1905, the Cattle Raisers' Association of Texas filed with the Interstate Commerce Commission a motion for additional and more specific findings. This motion was pending and had not been acted on when the petition to re-open the case, August 29, 1906, was filed. At the time the Interstate Commerce Commission handed down its report, findings and opinion—to wit, August 16, 1905, it was without power to prescribe rates for the future. One June 29, 1906, the Act to Regulate Commerce was amended by what is known as the Hepburn Bill and this power to prescribe rates was conferred upon the Interstate Commerce Commission.

Subsequent to the taking effect of this amendment, and on August 29, 1906, The Cattle Raisers' Association of Texas filed a petition to re-open the case and praying in substance that the Interstate Commerce Commission proceed in the case, started in February, 1904, to the making of an order under the fifteenth section of the Act to Regulate Commerce as amended June 29, 1906. The defendant railroad company and the other carriers thereupon attacked the jurisdiction of the Interstate Commerce Commission to make an order under the fifteenth section of the Act to Regulate Commerce as amended June 29, 1906. The Interstate Commerce Commission overruled this contention by its order made November 14, 1906, and ordered the case set down for further hearing, giving both The Cattle Raisers' Association of Texas and the carriers an ap-

portunity to offer such additional testimony as either might desire.

On April 14, 1908, the Interstate Commerce Commission, after taking additional testimony, reaffirmed its decision of August 16, 1905, and pronounced the rates therein condemned as unreasonable and unlawful, to be still excessive and unreasonable, and made its order prescribing the rates for the future accordingly, which rates took effect November 17, 1908. Questions as to reparation were reserved by the Interstate Commerce Commission to be dealt with as specific claims where presented. In the meantime and on the — day of —, 1908, the defendant and other carriers applied to the Circuit Court of the United States for the Eastern District of Missouri for an injunction against said order, which had a full hearing and was refused by the defendant. On the — day of —, 1911. Soon thereafter the claimants, Spiller and others, brought on for hearing their claims for reparation which the Commission heard from time to time. All said claims having been filed within the time prescribed by the act, but no action thereon was deemed proper pending the injunction case. The reparation case was proceeded with continuously and without unnecessary delay.

After a number of hearings and checking and rechecking claims, finally, on January 12, 1914, the Interstate Commerce Commission, in a supplemental report, made an order by which it ordered and directed the defendant railroad company to pay to the intervenor E. B. Spiller, assignee of a large number of shippers of cattle, the sum of \$27,682.75, that being the amount which the defendant had illegally exacted from the assignors of said Spiller, plus interest to June 15, 1914, and to pay to the shippers whose names were set out in the appendix to said supplemental report, and who had not assigned their claims to Spiller, the amount set opposite their names, together with the interest set out in said appendix. The aggregate of the amounts ordered paid to the individual shippers who had not assigned their claims, amounted, with interest to June 15, 1914, to \$3,244.61.

On May 27, 1913, on the bill of complaint of North American Company, a general creditor, receivers were appointed for the defendant railroad company and took over the

management and operation of said defendant's properties. After the appointment of the receivers on May 27th, and after January 12, 1914, and within the time prescribed by the Act to Regulate Commerce, the order of reparation made by the Interstate Commerce Commission in favor of the intervenors was served upon the defendant railroad company and its receivers. The defendant railroad company and its receivers refused to comply with the order of reparation and refused to pay the intervenors the moneys which the Interstate Commerce Commission had ordered it to pay and which it had illegally and unlawfully exacted from them. It should be stated that the order of reparation gave the defendant and other carriers six months within which to pay the moneys therein ordered paid. After the refusal of the defendant to pay the amount ordered paid by the Interstate Commerce Commission, and within the time prescribed by the Act to Regulate Commerce, to-wit—on December 29, 1914, and in accordance with section sixteen of said Act, the intervenor E. B. Spiller filed suit in the District Court of the United States for the Western Division of the Western District of Missouri against the defendant, and said other carriers, to enforce the payment by the defendant of \$27,682.75 which was the amount, principal and interest, that the Interstate Commerce Commission had ordered the defendant to pay as aforesaid, together with interest thereon from June 15, 1914. This suit was entitled E. B. Spiller, Plaintiff, v. Missouri, Kansas & Texas Railway Company, et al., Defendants, No. 4308.

The other intervenors, on the same date, also commenced suit in said District Court of the United States for the Western Division of the Western District of Missouri, against the defendant railroad company and other carriers to compel the defendant company to pay to them the amounts which the Interstate Commerce Commission had ordered said defendant to pay. This suit was entitled, E. B. Spiller, et al., v. Missouri, Kansas & Texas Railway Company, et al., No. 4320.

The attorneys employed and paid by the receivers, appointed as aforesaid, appeared specially in these cases and moved that the service be quashed claiming that service of summons had been had upon the agents of the receivers at Kansas City, and not upon the agents of the defendant rail-

road company. W. F. Evans, General Solicitor for the receivers of the railroad company, in association with the district attorneys for the receivers, appeared in this motion for the defendant.

Suits were also filed in the District Court of the United States at Fort Worth, the petitions being similar to the petitions filed in the District Court of the United States at Kansas City except that the receivers of the defendant were also made parties defendant.

On the 2d day of November, 1914, the receivers, W. B. Biddle, J. W. Lusk and W. C. Nixon, through their attorneys, W. F. Evans and others, filed a plea in abatement in those cases.

Similar suits were also filed in the District Court of the United States at St. Louis against the defendant railroad company in order to prevent any possibility of the running of the statute of limitations prescribed by the Act to Regulate Commerce.

In the suits brought in the District Court in St. Louis, the defendant railroad company was sole defendant. In the suits at Kansas City the defendant railroad company was [fol. 144] sued jointly with the other carriers against whom orders of reparation had been made.

Afterwards, the defendant railroad company, through its attorneys who were the attorneys for the receivers, entered its appearance in the suits in the District Court at Kansas City and the cases at [Forth] Worth and St. Louis were allowed to drop, the latter case being finally dismissed for want of prosecution. The cases in the District Court of Kansas City proceeded to trial and on August 16, 1916, the intervenor E. B. Spiller recovered judgment against the defendant railroad company in Cause No. 4308 in the sum of \$30,212.31 with interest thereon from August 1, 1916, at the rate of six per cent per annum until paid, and also judgment for \$3,021.23 as attorneys' fees to be taxed as costs.

On the same date and in the same court, the intervenors, E. B. Spiller, et al., recovered a total judgment of \$3,658.55, with interest thereon from August 1, 1916, until paid and also a judgment of \$364.63, attorneys' fees to be and which were taxed as costs.

The defendant railroad company appealed by writ of error from said judgment on August 28, 1916, to the Circuit

Court of Appeals for the Eighth Circuit. The petition for the writ of error was filed on August 28, 1916, by W. F. Evans and Cowherd, Ingram & Durham, attorneys employed and paid by the receivers of said defendant railroad company. These attorneys received no other compensation than that paid to them by the receivers.

At the time this appeal was taken to the Circuit Court of Appeals for the Eighth Circuit, a stipulation was entered into by and between the intervenors, and defendant and other carriers, under which no appeal was to be taken in cause No. 4320, E. B. Spiller, et al., v. Missouri, Kansas & Texas Railway Company, et al., but that the judgment in that case should abide the result of the final judgment in Cause No. 4308, E. B. Spiller v. Missouri, Kansas & Texas Railway Company, et al. On September 8, 1916, an appeal bond was filed in Cause No. 4308 in the penal sum of \$3,500.00. This bond was executed by the St. Louis & San Francisco Railroad Company as principal, by its attorneys, Cowherd, Ingram & Durham and by the United States Fidelity & Guaranty Company as surety, and was obtained by the receivers.

All of the steps taken to perfect the appeal from the judgment of the District Court of the United States for the Western Division of the Western District of Missouri were [fol. 145] taken by the attorneys employed and paid by the receivers up until the time the properties of the railroad company in the hands of the receivers were turned over to the St. Louis-San Francisco Railway Company, which was on or about November 1, 1916. From that date, to-wit—November 1, 1916, the attorneys for the railway company, employed solely by the railway company, handled the case for the railroad company.

The order appointing the receivers made May 27, 1913, provided:

“They (referring to the receivers appointed in the order) are authorized and directed to collect all moneys due and all moneys to become due to said company, to institute and prosecute such suits in their own names as receivers or in the name of the company, as their attorney may advise, to defend such suits as may be brought against them and those now pending or hereafter brought against the company

which affect or may affect the property of which they are now or may become receivers.”

On October 29, 1917, the Circuit Court of Appeals for the Eighth Circuit reserved the judgment of the District Court of the United States for the Western Division of the Western District of Missouri rendered in favor of *E. B. Spiller v. Missouri, Kansas & Texas Railway Company, et al.*, in said Cause No. 4308, and remanded the case for a new trial. This judgment, as to some of the grounds for a reversal, was modified on March 11, 1918, and on March 27, 1918, the mandate of the Circuit Court of Appeals was filed.

Thereupon, intervener *E. B. Spiller* appealed by writ of certiorari from the judgment of the United States Circuit Court of Appeals for the Eighth Circuit, to the Supreme Court of the United States. On May 17, 1920, the Supreme Court of the United States reversed said judgment of the United States Circuit Court of Appeals for the Eighth Circuit and affirmed the judgment of said District Court of the United States for the Western Division of the Western District of Missouri. The mandate of the Supreme Court of the United States was filed on June 6, 1920, in the office of the Clerk of the District Court for the Western Division of the Western District of Missouri.

In July, 1920, intervener *E. B. Spiller* his application or motion for additional attorneys' fees in the District [fol. 146] Court of the United States for the Western Division of the Western District of Missouri in said Cause No. 4308, and on the 20th day of July, the Court entered judgment allowing said intervener, as an additional attorneys' fee, \$1,654.09 and taxed the same as costs making the total of the attorneys' fees allowed and taxed as costs the sum of \$4,675.32.

Prior to August 29, 1916, neither interveners nor their attorneys had had any notice or knowledge of any order made by the court fixing the time within which claims could be filed in this cause and in this court. Notice by publication was made as required by the orders. On that date, the attorneys for the interveners, by searching the records in this cause, learned for the first time that such an order has been made and that the time fixed by the order had expired. On August 29, 1916, the matter of the

hearing of the application for a confirmation of the sale by the Special Master of the properties of the defendant railroad company was up for hearing in this court before His Honor, Judge Sanborn. The attorneys for the receivers, for the re-organization managers and other parties in interest were present in court. In open court the attorneys for the interveners gave notice that interveners had a claim against the defendant railroad company for illegal freight exactions, that their claims had been reduced to judgment in the District Court of the United States for the Western Division of the Western District of Missouri, that an appeal was being taken from said judgment by the defendant railroad company and other carriers and that the contention of the interveners was that their claims were prior in right and superior in equity to the claims of all other creditors, including bondholders. Thereafter, and upon the same date, a written notice was served upon Honorable Henry W. Taft, attorney for the reorganization committee and the St. Louis-San Francisco Railway Company and others, also upon W. F. Evans, the attorney for receivers and attorney for the St. Louis-San Francisco Railway Company and also upon other attorneys representing other parties in interest. This notice recited the recovery of the judgments by the interveners, the nature of interveners' claims, that no notice of any of the proceedings in this cause had ever come to the knowledge of the interveners, the knowledge of the receivers of the existence interveners' claims, the participation by the attorneys of the receivers in the defense of the cases against the defendant railroad, the failure of the receivers to list the claim of the interveners, as required by the final decree, that the claim of the interveners was prior in right and superior in equity to the claims of all other creditors [fol. 147] of the defendant railroad and that interveners would assert their rights of payment against the St. Louis-San Francisco Railway Company which had been organized to purchase the property of the defendant railroad.

Speyer and Company and J. & W. Seligman and Company of New York were the reorganization managers of the St. Louis & San Francisco Railroad Company. They prepared and filed in this court a plan of reorganization which, with the exception of a modification required by

the Public Service Commission of Missouri, was carried out and consummated. The general scheme of this plan was that the new company, the St. Louis-San Francisco Railway Company, was to be organized to take over the properties of the defendant railroad. These properties were to be sold by a Master at foreclosure sale. Securities, consisting of prior lien bonds secured by first mortgage on all the properties of the reorganized company, adjustment mortgage bonds secured by mortgage on the properties of the reorganized company but subject to the mortgage securing the prior lien bonds, income mortgage bonds, secured by mortgage on all the properties of the reorganized company but subject to the prior lien mortgage and the adjustment mortgage, and preferred stock and common stock, were provided for. The securities of the new company were to be exchanged for the securities of the old. Part of them were to be used to satisfy the claims of general creditors. Under the plan the holders of the five million dollars of first preferred stock of the old company and the holders of sixteen million dollars of second preferred stock of the old company were to receive a bonus in preferred and common stock in the new company. The Public Service Commission of Missouri refused to approve that part of the plan and the plan was modified and under the plan as modified, the holders of five million dollars of first preferred stock of the railroad company were to receive, and did receive, five million dollars of the new common stock, the holders of the sixteen million dollars of second preferred stock of the old company were to receive, and did receive, sixteen million dollars of the common stock of the new company and the holders of the twenty-nine million dollars of common stock of the old were to receive, and did receive, \$24,650,000.00 of the common stock of the new company. In other words, the stockholders of the old company were to receive, and did receive, \$45,650,000.00 of the stock of the new company as representing their equity in the properties without payment of anything by them therefor.

[fol. 148] The fact that under the plan, these stockholders were required to buy \$50.00 worth of the prior lien bonds for each share of stock does not affect the situation. These bonds were secured by a first mortgage on all of the prop-

erties of the reorganized company and presumptively were worth par.

In the application filed by the reorganization managers and by the St. Louis-San Francisco Railway Company with the Public Service Commission for authority to issue securities, it was stated and shown that the value of the railroad properties and of properties not used for railroad purposes and the cash to be received from the receivers was \$321,776,000.00. This was the value accepted and found to exist by the Public Service Commission of Missouri, and is accepted as the value of such properties by the Master. The total of the securities, bonds, preferred stock and common stock of the new, or St. Louis-San Francisco Railway Company, to be issued under the plan as authorized by the Public Service Commission, was \$321,688,886.00, or so much thereof as might be necessary.

No offer was ever made by the railroad company or the receivers, or by anybody else to pay the claims of interveners and no tender of any payment either in money or otherwise was ever made by any one to them. On the contrary, the railroad company, the receivers and the railway company, through their attorneys, have constantly since the making of the order of reparation by the Interstate Commerce Commission in 1914, and prior thereto, contested every effort made by interveners to establish their claims. The interveners have from the beginning shown the utmost diligence in the prosecution of their claims and have been guilty of no laches.

On December 2, 1920, the interveners applied to His Honor, Judge Walter H. Sanborn for leave to file their intervening petitions herein. On February 12, 1921, Judge Sanborn granted said applications, his order in that regard in Case No. 4308, being as follows:

"Upon consideration of the application of E. B. Spiller for leave to file intervening petition herein, which was verified December 2, 1920, and of the argument of the counsel for the respective parties upon the hearing of this application, it is hereby

Ordered that the application be granted; that the applicant have leave to file his petition; that the St. Louis and San Francisco Railway Company answer the petition or take such other action against it as it may be advised

[fol. 149] within twenty days after the service of this order by its attorneys, and that the issues raised by the intervention be and they are hereby referred to the Special Master for hearing, consideration, report of the facts and his conclusions."

The order of Judge Sanborn in Case No. 4320 is the same.

The opinion of Judge Sanborn on the applications of the interveners for leave to file intervening petitions is as follows:

"In view of the opinion in *Love vs. North American Company*, 229 Fed. 123, and of the averments of the applicants that on account of the necessity of first establishing their claims by the findings and orders of the Interstate Commerce Commission, they could not have enforced them in the foreclosure proceeding at any time before February 1, 1916, the limit of time fixed for presenting claims by the orders in those proceedings, and that they have been diligently establishing these claims by necessary litigation before the Interstate Commerce Commission, the District Court and the Supreme Court, and that they notified the attorneys for the purchasers at the foreclosure sale before they paid for their purchase of their claims and of their intention to press them, the court is not persuaded that they are barred in this Court of Equity from a presentation and consideration of their claims either by the orders limiting the time within which claims were to be presented in the foreclosure proceedings or by the inexcusable laches of the applicants."

As stated above, the Interstate Commerce Commission on August 16, 1905, found that the rate published in 1903 was unjust and unreasonable to the extent of three cents per hundred pounds. On April 14, 1908, the Interstate Commerce Commission reaffirmed this finding. From August 16, 1905 until the new rate fixed by the Interstate Commerce Commission in April, 1908, went into effect, which was in November, 1908, the defendant railroad company continued to exact from interveners and their assignors the rate which was, and had been found to be, unreasonable, unjust and unlawful. All of the items of the exactions involved in interveners' claims were exacted by the

railroad company between August 16, 1906, and the date when the rate fixed by the Interstate Commerce Commission for the future went into effect, that is November 17, 1908. This new rate was the rate that existed prior to the increase in 1903 of three cents per hundred pounds. Therefore, all of the items of interveners' claims were exacted in the face of the positive finding of the Interstate Commerce Commission that they were unjust and unreasonable and therefore unlawful.

From June 29, 1906, until May 27, 1913, the date when receivers were appointed herein on the bill of complaint of the North American Company, a general creditor, the net operating income of the railroad company was \$92,471,-350.28. In other words, the operating income exceeded the operating expense, including taxes, by that sum. From July 1, 1912, to May 27, 1913, operating income exceeded operating expenses, including taxes, by \$11,752,379.60. In fact, there was not a year from June 30, 1906 to May 27, 1913, except the year ending June 30, 1908—when the operating income exceeded operating expenses, including taxes, by \$9,944,600.89—that the operating income did not exceed the operating expenses including taxes by over \$11,000,000.00.

Foreclosure proceedings by the bondholders were first started May 22, 1914, or nearly one year after the receivers were appointed on the bill of complaint of the general creditor, North American Company. From May 27, 1913 to April 30, 1914, the operating or current receipts exceeded the operating expenses, including taxes, by \$12,930,858.89, the earnings being during said period \$48,-380,219.16 and the operating expenses being \$35,449,360.17. During every year from June 30, 1906 to May 27, 1913, the defendant company paid large sums in excess of the excess charges collected from interveners and their assignors, by way of interest on its mortgaged indebtedness and for betterments and improvements to its railroad and equipment and by way of purchase of new equipment. From May 27, 1913, to May 22, 1914, the receivers paid out large sums by way of betterments to road and equipment and by way of interest on its mortgaged indebtedness.

From and after the time when the first item of these excessive charges was collected, to-wit—August 29, 1906, down to the date of the appointment of the receivers on May 27, 1913, there was at all times in the treasury of the defendant railroad company an amount of money in excess of the aggregate of the claims of the interveners with interest. On May 27th, when the receivers of defendant railroad company were appointed, the defendant railroad company had on hand and turned over to the receivers over \$600,000.00 in cash. Some days after the appointment of the receivers, certain banks appropriated enough of this fund to reduce it to \$338,000.00. These excessive charges were not kept by the defendant railroad company in a separate fund but were mingled with the general receipts of the railroad company. The depositories of the railroad company had no instructions to keep the excessive charges collected by the railroad company in a specific fund, and did not keep the moneys representing said excessive charges in a separate account. The railroad company, during all of said time, was constantly diminishing its funds by checking thereon and just as constantly increasing them by deposits, but it always had on hand in its treasury, as above stated, an amount in excess of the aggregate of the claims of the interveners with interest.

Subsequent to the receivership the claim of the Corporation Commission of the State of Oklahoma, for overcharges exacted from shippers in Oklahoma, amounting to \$76,627.35, was allowed as a preferred claim and paid. A claim for \$12,124.51, in favor of a surety company, was allowed on account of similar overcharges as a preferred claim and paid. There were no other depletions of the fund turned over by the railroad Company to the receivers. After the appointment of the receivers, the receivers paid out large sums of money for supplies, etc. purchased prior to the receivership. On the other hand, the railroad company turned over to the receivers, and the receivers received, supplies, etc. of equal or greater value.

After the receivers were appointed, they paid out large sums of money to other railroad companies in settlement of car service and traffic balances. Settlements between railroads, however, on this kind of business were made on

the basis of net balances and while for the first few days of the receivership the disbursements on account of this class of claims exceeded the receipts, yet the receipts on account of this class of business accruing prior to the receivership largely exceeded the disbursements on account of this class of business. According to the first bi-monthly report of the receivers, the receipts on account of this class of business accruing prior to the receivership were \$395,374.71 and the disbursements \$396,286.58. According to the second bi-monthly report of the receivers, the receipts were \$229,953.84 and the disbursements \$191,198.71. From December 31, 1908, to May 15, 1913, the defendant railroad company issued \$55,257,220.00 of its general lien fifteen-year gold bonds and between 1910 and 1912 it issued \$2,444,000.00 of its secured gold notes and between June 21, 1909 and November 21, 1911, the Kansas City, Fort Scott & Memphis issued \$3,421,950.00 of its refunding mortgage four per cent bonds. There is no showing for what purpose these bonds were issued or to what use the proceeds were put. During all of said years when these bonds [fol. 152] were being issued, the net operating income, that is to say—the excess of operating income over operating expenses, including taxes—was in excess of \$11,000,000.00 each year.

As stated above, all of the properties of the defendant railroad company which passed to the receiver, except some non-productive properties which were left out of the plan of reorganization, were turned over to the reorganized company, the St. Louis-San Francisco Railway Company on November 1, 1916. At this time the receivers turned over to the new company over \$5,000,600.00 in cash which they had accumulated during the receivership.

In May, 1914, an interlocutory decree was entered in the receivership case, wherein among other things, the Court ordered that the holders of claims against the defendant railroad company should file their claims with the Special Master by October 1, 1914, and failing so to do, their claims should be barred. This time for filing claims was subsequently from time to time extended, finally expiring February 1, 1916. Notice by publication of the foregoing provision of the interlocutory decree was given as required by the decree. In March, 1916, a final decree was entered

in the receivership case. It is not necessary to set out the pertinent provision of the final decree in these findings of fact as they will be referred to in the conclusions of law. Accordingly the Master finds all of the issues raised by the pleadings in favor of interveners.

### Conclusions of Law

Both the defendant railroad company and the railway company have in their answers offered certain pleas in bar. Of necessity, these should be disposed of first.

First. It is contended that since interveners did not file their claims within the time prescribed by the interlocutory decree, they are barred and the intervening petitions should be dismissed.

Second. It is contended that these claims arose prior to the entry of the final decree and that therefore they are barred by the final decree, and that the intervening petitions should be dismissed.

Third. It is contended that because interveners filed suits in the Federal Court at St. Louis, similar to the suits filed in the District Court of the United States for the Western [fol. 153] Division of the Western District of Missouri, and after the defendant and the other carriers involved in those suits had submitted themselves to the Jurisdiction of the District Court for the Western Division of the Western District of Missouri, permitted the suits in the Federal Court at St. Louis to be dismissed for want of prosecution their claims are barred and the intervening petition should be dismissed.

His Honor, Judge Sanborn, on the applications of the interveners for leave to intervene, ruled on these pleas adversely to the defendant and the railway company. Judge Sanborn's memorandum opinion in that regard is as follows:

"In view of the opinion in *Love vs. North American Company*, 229 Fed. 123, and of the averments of the applicants that on account of the necessity of first establishing their claims by the findings and orders of the Interstate Commerce Commission, they could not have enforced them in

the foreclosure proceedings at any time, before February 1, 1916, the limit of time fixed for presenting claims by the orders in those proceedings, and that they have been diligently establishing these claims by necessary litigation before the Interstate Commerce Commission, the District Court and the Supreme Court, and that they notified the attorneys for the purchasers at the foreclosure sale before they paid for their purchase of their claims and of their intention to press them, the court is not persuaded that they are barred in this Court of Equity from a presentation and consideration of their claims either by the orders limiting the time within which claims were to be presented in the foreclosure proceedings or by the inexcusable laches of the applicants."

The order of reference made on those applications for leave is as follows:

"Upon consideration of the application of E. B. Spiller for leave to file intervening petition herein, which was verified December 2, 1920, and of the argument of the counsel for the respective parties upon the hearing of this application, it is hereby

Ordered that the application be granted; that the applicant have leave to file his petition; that the St. Louis and San Francisco Railway Company answer the petition or take such other action against it as it may be advised within [fol. 154] twenty days after the service of this order by its attorneys, and that the issues raised by the intervention be and they are hereby referred to the Special Master for hearing, consideration, report of the facts and his conclusions."

It appears from the files in this case, and from the statement of counsel to the Master that these very pleas in bar, which are now urged, were presented to Judge Sanborn and considered by him, both on the original application and on the subsequent application to file the supplemental intervening petition.

I would infer, therefore, that Judge Sanborn's opinion is a direction to me to consider these cases on their merits, but in order to avoid the possibility of a re-reference, I

have considered it my duty to hear all the evidence offered by either side on these pleas in bar, and to consider the matter *de novo*. After a thorough investigation of this subject, I am convinced that the pleas in bar are without merit for the following reasons:

A court of equity has discretionary power to permit the filing of claims in a receivership case after the order fixing the time within which claims must be filed and after the entry of the final decree.

*People ex rel vs. Security Life Ins. & Annuity Co.*,  
70 N. Y., l. c. 271.

*Washington Bank vs. Creditor*, 80 N. Car., l. c. 10,

*Park vs. N. Y. etc. Ry. Co.*, 140 Fed. 799.

*In re Ziegler*, 90 N. Y. Sup. 683,

*Grinnell vs. Insurance Co.*, 16 N. J., 283,

*Wall vs. Young*, 54 N. J. Eq., 24.

Equity requires the favorable exercise of this discretionary power in cases where the claimant can not be charged with inexcusable laches, and where all of the assets of the estate have not been distributed to the creditors. In the case of *People ex rel. vs. Security Life Ins. & Annuity Co.*, *supra*, the Court said:

"The power of the court over the proceeding is the same as it would be over a final decree obtained in a creditor's suit commenced for the benefit of all parties. In such a case it is well settled that a creditor, upon a proper case made by petition, may be permitted to come in and prove his debt at any time while the fund or any part thereof is under the control of the court, notwithstanding the time [fol. 155] limited by the master for the creditors to come in and prove their debts had expired, or, as is elsewhere said, 'The neglect or omission of one will not preclude his right to be afterwards let in, provided the other creditors are placed in no worse condition than if all had come in at the same time.'"

It can not reasonably be said that the interveners in this case were guilty of laches. On the contrary, it seems to the Master that they were persistently diligent. Their representative, The Cattle Raisers' Association of Texas, in 1904,

attacked the rates which had been put into effect by the defendant railroad company in 1903 as unjust and unreasonable in the only tribunal where such a complaint would lie. After an extensive hearing, the Interstate Commerce Commission found that the rates charged were unreasonable and unjust to the extent of three cents a hundred pounds, and found that the carriers should be required to desist from charging that excessive and unlawful rate. Thereupon a petition was filed by The Cattle Raisers' Association for more specific findings of fact. The Hepburn Bill went into effect in 1906, whereupon The Cattle Raisers' Association filed a petition with the Interstate Commerce Commission asking that the Commission proceed with the original case to the making of an order under the fifteenth section of the Act to Regulate Commerce as amended. Another extensive hearing was had before the Commission and in November, 1908, the Commission reaffirmed its order of 1905, declaring the rate to be unjust and unlawful to the extent of three cents a hundred pounds, and made an order fixing the rates for the future. The defendant railroad company, and the other carriers involved, thereupon filed a suit in this Court to enjoin the Commission from carrying that rate into effect. The injunction was denied by the Circuit Court and an appeal was taken by the defendant and other carriers to the Court of Appeals, where the judgment of the lower court was affirmed in 1911. Thereupon, the interveners proceeded with their claims for reparation before the Interstate Commerce Commission.

In January, 1914, the Interstate Commerce Commission decided these claims and made the orders of reparation, ordering the defendant to repay to the interveners the moneys which formed the basis of these interventions. Under the law, and under the order of the Interstate Commerce Commission, the defendant had six months within which to comply with that order. During that time the interveners could do nothing. In December, 1914, interveners, [fol. 156] in conformity with the procedure laid down in the Act to Regulate Commerce brought their suits in the District Court of the United States for the Western District of Missouri. With no unnecessary delay, those suits were brought to judgment in August, 1916, in that court.

Thereupon, the defendant, together with the other carriers, appealed from that judgment to the Circuit Court of Appeals of this Circuit. In March, 1918, the Circuit Court of Appeals reversed and remanded those cases. Thereupon, and with proper diligence, the interveners appealed by writ of certiorari to the Supreme Court of the United States. The Supreme Court of the United States, in the latter part of May, 1920, reversed the judgment of the Circuit Court of Appeals and affirmed the judgment of the District Court for the Western Division of the Western District of Missouri. Thereupon, interveners filed a petition in the latter court for the allowance of additional attorneys fees, to be taxed, as costs. In July of 1920, that Court rendered judgment sustaining the application for the allowance of additional attorneys' fees. In December of the same year, interveners filed their petitions for leave to intervene.

Every step that intervenors took to recover the excessive charges exacted from them and their assignors was vigorously opposed in turn by the defendant railroad company, by the receivers and by the railway company, through their attorneys. That there was no laches appears to be the only reasonable inference that can be drawn from the conduct of the parties. This is especially true in view of the fact that neither the intervenors nor their counsel had notice or knowledge of the making of the interlocutory decree or of the final decree until long after the time therein fixed for the filing of claims had expired.

In the case of *Northern Pacific Railway Company v. Boyd*, 228 U. S. 1. c. 509, this question of laches was raised. There the delay was much greater than it is in this case. The Supreme Court said (page 509):

"His delay was not the result of inexcusable neglect, but in spite of diligent effort to put himself in the position of a judgment creditor of the *Coeur D'Alene* so as to be able to proceed in equity to collect his debt. He accomplished this result only after protracted litigation, beginning in 1887 and continuing through the present appeal (1913)."

It is urged by the defendant and the railway company that other claimants of reparation filed their claims in the [fol. 157] receivership case even before the Interstate Com-

merce Commission had made orders of reparation, and that those claims were allowed for such amounts as the Interstate Commerce Commission might fix by its orders of reparation. The Master does not believe that this fact is material. The intervenors followed the procedure prescribed by the Act to Regulate Commerce. If, then, we are to determine what the attitude of the defendant and the receivers might have been had intervenors filed their claims without resorting to the remedy prescribed by the Act to Regulate Commerce, by what they did in opposition to the efforts of the intervenors to establish their claims in conformity with the procedure laid down by the Act, the Master must assume that an effort would have been made to have the claims thrown out on the theory that the procedure prescribed by the Act to Regulate Commerce was exclusive; but, be that as it may, as said above, the Master does not believe that it is material what others did, or what agreements might have been entered into by other claimants and the attorneys for the receivers.

That no other creditor will be injured by the consideration and allowance of these claims is plain. What the general creditors of the defendant received under the reorganization can neither be cut down nor increased by the consideration and allowance of these interventions. The general creditors received an offer of settlement of their claims under the reorganization which the Court found reasonable. No offer of settlement of any kind was ever made to these intervenors. It, therefore, is clear that as to these intervenors under the authority of the case of *Northern Pacific Railway v. Boyd*, *supra*, there has never been any distribution of the assets of this estate.

As the Master interprets the final decree, it, in his opinion, contemplated that claims such as these might be filed after its entry. Article 9 of the decree provides that the purchasers of the property shall take the property and receive the deeds or other instruments of conveyance upon the express condition that they will satisfy and discharge.

“(b) Any unpaid claims of creditors of the defendant railroad company which have been or shall be admitted by the parties in interest, or adjudged by this Court to be prior in lien or superior in equity to the refunding mortgage or to the general lien mortgage.”

By paragraph (b) of Article 10 of the final decree, the receivers were required to file a statement showing all un- [fol. 158] paid liabilities incurred by the railroad company prior to the appointment of the receivers, which so far as they were informed, were claimed to be prior in lien and superior in equity to the refunding mortgage. By paragraph (e) of this same article, all claims which had been filed pursuant to orders theretofore made were required to be listed. It will thus be seen that two classes of claims were required to be listed—first, those for which priority was claimed, and second, those which had been theretofore filed. It is then provided in this article of the decree that all claims which had not been filed in accordance with the orders theretofore made should not be [enforceible], except, or as to the decree itself reads, “other than any claim or demand which may arise after the entry of this decree.” The Master is of the opinion that the word “arise” in this decree is not used in the sense of “accrue.” It would be difficult, if not impossible, to conceive of a claim accruing against the railroad company after the entry of the final decree. The railroad company stopped functioning when the receivers were appointed. A claim, however, might arise for the consideration of the Court after the entry of the final decree, and the Master is of the opinion that these interventions are claims arising after the entry of the decree.

The receivers, though they had been constantly litigating these claims and had been informed that priority was claimed for them, did not list them as required by paragraph (b), Article 10 of the final decree.

It is urged by the railroad company and the railway company that no appeal was taken by the intervenors from the final decree. In the Master's opinion that does not affect the situation. Moreover, the intervenors had no notice or knowledge of the making of either the interlocutory decree or the final decree. They were not at that time parties to the cause either personally or by representation. *Northern Pacific Railway v. Boyd*, 228 Fed. l. c. 502, 505.

It is urged also that the railway company purchased the property under the final decree, and that it became a part of the contract of purchase and that to allow the claims of intervenors would disturb its contract rights. Under the

Master's interpretation of the final decree, the railway company took this property subject to the claims of intervenors if they are allowed. That is a part of their express undertaking. It would seem moreover, that even if this were not true, the sale to the railway company while valid as between creditors to whom offers of settlement had been [fol. 159] made, and the stockholders of the old company and the purchaser, yet as between these intervenors and the purchaser, the sale was a mere form and void. The equity of the stockholders of the old company in the properties transferred to the new company was recognized in the reorganization, and for their equity, the stockholders in the old company, both preferred and common, received stock in the new company. No offers of settlement, either of cash or securities, were ever made to the intervenors. Their claims were vigorously and consistently opposed by the railroad company, by the receivers and finally by the railway company itself. The receivers, the reorganization managers, the railway company all knew of these claims, and knew that it was claimed that the claims were prior in right and superior in equity to the claims of all other creditors, including bondholders. Before the sale was confirmed, they were so notified in open court and by actual written notice.

The Master is unable to see under these circumstances why the same rule that applied in the direct suit of *Northwestern Pacific Railway v. Boyd* does not apply in this case. However, under the views heretofore expressed, it is not necessary to rule on the question as to whether or not the sale was valid or invalid. The Master is of the opinion, in line with the opinion of His Honor, Judge Sanborn, that intervenors are not barred in this court of equity from a presentation and consideration of their claims on their merits either by the orders limiting the time within which claims were to be presented in the foreclosure proceedings, or by inexcusable laches of the applicants.

Intervenors contend that their claims embraced in their original bills of intervention should be allowed and given priority over the claims of all other creditors, including bondholders, and base their contention on three grounds.

First. On the ground that the excess charges were unlawful exactions taken from them, or their assignors, by

duress, and that therefore the defendant railroad company became a trustee ex maleficio for their benefit;

Second. On the ground that these excess charges were taken from the intervenors and their assignors, the shippers, against their will, and that, therefore, these claims come within the rule which underlies the right to a preferential payment. In other words, it is contended that in principle, these claims come within the rule under which claims for labor, supplies and like things necessary for the ordinary operation of the railroad are held to be preferential.

[fol. 160] Third. That a sound public policy requires that they be allowed as preferential claims.

It would serve no useful purpose to analyze all of the decisions cited by counsel on the question as to when a trustee ex maleficio arises. It is well settled that where one wrongfully obtains the possession of another's property by fraud, duress, or by taking advantage of that other's weakness, the persons thus obtaining the property holds it in trust for the other as a trustee ex maleficio. In 3 Pom. Equity Jur., Section 1053, the rule is thus stated:

"In general, whenever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means or under any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of one who is truly and equitably entitled to the same."

That a railroad company and a shipper are not on an equal footing is too plain for argument. That a shipper who pays to a railroad company a rate in excess of a reasonable rate is, as to such excess, acting under practical duress is equally plain. The collection by a railroad company of an unjust and unreasonable freight rate is, as to the excess over a reasonable rate, wrongful and unlawful. A railroad company, therefore, which collects from the

shipper an unreasonable rate is, as to the excess over a reasonable rate, a trustee *ex maleficio* for the shipper.

Love vs. North American Company, 229 Fed. l. c. 106.

White vs. Delano, 270 Mo. 216.

Mercantile Trust Co. vs. St. Louis & San Francisco R. R. Co., 69 Fed. 193.

Angle vs. Chicago, St. P., M. & O. R. Co., 151 U. S. 125.

Chapman vs. Douglas, 107 U. S. 348.

Central Stock & Grain Co. vs. Bedinger, 109 Fed. 926, Richardson vs. New Orleans, 102 Fed. l. c. 782.

In the case of Love vs. North American Company, *supra*, which was a case that arose in this Frisco receivership, and in which the facts are practically identical with the facts in this case, the Court said:

“The question now might be properly asked, to whom do the excessive charges received by the Frisco Company for [fol. 161] the transportation of freight belong? They certainly do not belong to the general creditors of the Frisco Company, nor to the bondholders, nor the Frisco Company itself. Without question they belong to the shippers. We must not be deceived as to the true status of this claim, nor allow the bond, or the fact that the claim is presented by the Corporation Commission, to bind us to the fact that the claim is one due to the shippers for excessive charges paid by them to the Frisco Company for transportation of freight. The shippers not only paid the lawful charge, but they did more. They paid an excessive charge. That payment was an illegal exaction, and, as against the railroad company, and volunteers, like the receivers, the money belonged to the shippers after the payment the same as before. It will be presumed that it was a part of the money in the treasury of the company which passed to the receivers. That money came into the hands of a court of equity. What ought such a court to have done with it? Surely it could do nothing but direct that it be returned to the shippers to whom it belonged. It having been paid to the bondholders, or for permanent betterment of the property for their benefit through the agency of a court of equity, that court, as a court of conscience, can do no less than direct its restoration.

That the defendant railroad company exacted from these intervenors and their assignors an unreasonable and unjust freight rate, to the extent of three cents per hundred pounds, must be conceded. That this exaction was obtained by duress is settled. The railroad company always had on hand in its treasury, from the time the first unreasonable and unjust charge was exacted down to the date of the appointment of the receivers, an amount of money in excess of the claims of intervenors with interest. Regardless of what may be said of the action of the banks in appropriating part of the moneys turned over by the defendant railroad company to the receivers on their appointment, it remains that the defendant turned over to the receivers, and the receivers received at least \$338,000.00. It will be presumed that the money which was legally exacted from the intervenors and their assignors was a part of the money in the treasury of the company which passed to the receivers. A court of equity, "a court of conscience, can do no less than direct its restoration."—*Love vs. North American Company*, *supra*.

It is contended by the defendant and the railway company that since the rates collected were the published rates, [fol. 162] they were not unlawfully collected. The Master is unable to agree with this contention. By Section 1 of the Act to Regulate Commerce, it is provided:

"All charges made for any service rendered, or to be rendered in the transportation of passengers or property, as aforesaid, or in connection therewith or for the receiving, delivering and handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

This section is but declaratory of the common law.

On August 16, 1905, the Interstate Commerce Commission after a full hearing, found that these rates were unjust and unreasonable, its order in that regard being as follows:

"It has been found that the advances made during the year 1903, as shown by the appendix, were unjust and unreasonable, and that the present rates are unjust and unreasonable by the amount of said advances. The defendant

should, therefore, be required to cease and desist from the maintenance of these rates. \* \* \* All questions of reparation are reserved."

All of these exactions, therefore, were obtained in the teeth of the prohibition of Section One of the Act and of the findings of the Interstate Commerce Commission.

Section Six of the Act to Regulate Commerce requires all railroads to publish their rates. As long as a rate is the published rate, a carrier cannot charge or demand or collect or receive a greater or less rate than the published rate. In other words, the published rate is the rate which the carrier must charge and the shipper must pay. A violation of the Act in this respect is declared to be a misdemeanor. It is conceded that the rate charged these intervenors, and their assignors, was the published rate. The question is therefore, Can a railroad company by continuing to publish an unreasonable and, therefore, unlawful rate, make the rate a lawful rate? To give this effect to Section Six of the Act would mean that Section One must be utterly destroyed and construed out of the Act. In the opinion of the Master no such effect can be given to Section Six.

In enacting the Act to Regulate Commerce, Congress had at least two principal objects in view—the prohibition of unreasonable and unjust rates and the preventing of discrimination of all kinds. These two objects are accomplished in Sections One and Six of the Act, and effect may be given to both of them. This same question has been before the Interstate Commerce Commission many times. In those cases it was urged by the carriers that since the published rate was the legal rate, therefore, in charging it, the carrier was doing something it had a full right to do, and therefore, in collecting that published rate, they were not injuring the shipper, and therefore, since the shipper had suffered no wrong, he could not be entitled to reparation. Passing on this question, the Interstate Commerce Commission, in *Arkansas Fuel Co. vs. C. M. & St. P. Ry. Co.*, 16 I. C. C. Reports, page 97, said:

"It has been said that the word 'legal' looks more to the letter and 'lawful' to the spirit of the law; that 'legal' imports rather that the forms of law are observed and the

rules prescribed obeyed and the word 'lawful' that the act is rightful in substance. The two words may aptly be used as illustrative of the distinction that we have attempted to draw in the cases cited. It is provided in section 6 of the act that no carrier shall collect or receive a greater or less compensation than the rates specified in the tariff in effect at the time of the movement. Other provisions of law make it a misdemeanor for the carrier to depart from the published rate. In dealing with shippers the carrier is therefore required to conform the freight charges actually collected to the amount fixed in its published tariffs. In that sense the published rate in effect at the time of the movement is therefore the legal rate. It is what the letter of the law requires the shipper to pay and the carrier to collect.

"But the first section of the act, following the rule of the common law, declares that all charges for services rendered by a carrier in the transportation of passengers or property shall be reasonable and just. It also declares every unjust and unreasonable charge for such a service to be unlawful. In publishing a rate or schedule of rates the carrier therefore acts under this admonition of the statute. \* \* \* While it may be, and indeed is, the legal rate—the rate that must be paid by the shipper and collected by the carrier because it is the published rate—the mere publication cannot make a rate lawful that is unreasonable and excessive."

The question has been decided in principle by the Supreme Court of the United States, and by the Circuit Courts of Appeal on several different occasions.

The case of *Southern Pacific Company vs. Darnell-Taenzler Co.*, 245 U. S. 531, was a reparation case. In that case [fol. 164] the excessive freight charge had been passed on by the shipper to the consumer, and it was contended by the railroad company that the shipper had suffered no loss. Mr. Justice Holmes said (on page 534):

"The plaintiffs suffered losses to the amount of the verdict when they paid. Their claim accrued at once in the theory of the law and it does not inquire into later events. The carrier ought not to be allowed to retain his illegal

profit, and the only one who can take it from him is the one that alone was in relation with him, and from whom the carrier took the sum."

If the exactions had not been unlawful, the claim could not have accrued at the time the exactions were made. The carrier receives the illegal profit when the exaction is made.

In this same case, the Court said:

"But here the plaintiffs have paid cash out of pocket that should not have been required of them, and there is no question as to the amount of the proximate loss."

In the case of *Mills vs. Lehigh Valley R. R. Co.*, 238 U. S. 473, which was a reparation case, the Interstate Commerce Commission had found that the shipper was entitled to the excess charges as reparation. It was contended by the railroad company in that case that this was not a finding that the shipper had been damaged.

Mr. Justice Hughes, on page 481, said:

"What the Commission decided was that the shippers were entitled to reparation, that is, to be made whole, to be compensated for a loss because of an illegal and unreasonable exaction \* \* \*."

In the case of *Phillips vs. Grand Trunk Ry. Co.*, 236 U. S. 662, a case in which recovery was denied because suit had not been filed within the time fixed by the statute, the Court, through Mr. Justice Lamar, said:

"But while every person who had paid the rate could take advantage of the finding that the advance was unreasonable, he was obliged to assert his claim within the time fixed by law. When the overcharge was collected a cause of action at once arose and the shipper at once had the right to file a complaint or to intervene in proceedings instituted by others."

The cause of action at once arose because the exaction was unlawful at the time it was made.

[fol. 165] The Circuit Court of Appeals, in the case of *Darnell-Taenzler Co. vs. Southern Pac. Co.*, 221 Fed. l. c. 894, said:

"Cases of excessive and unreasonable rates differ from discriminating charges in the fact that in the latter there is nothing unlawful in the charging and receiving of the higher or published rate on which the demand for reparation is based; the unlawfulness is in giving a lower rate to someone else. On the other hand, the charging of an excessive and unreasonable rate is ipso facto unlawful."

In the case of *Texas and Pacific Ry. vs. Abilene Cotton Oil Co.*, 204 U. S. 426, Chief Justice, then Justice White, said:

"Although an established schedule of rates may have been altered by a carrier voluntarily or as the result of the enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaint of and awarding reparation to individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force."

A wrong cannot be unlawfully suffered if the act which causes the wrong is a lawful act. All of these cases hold that the exaction of an unjust and unreasonable rate is an unlawful exaction, and unlawful at the time it is made. It can make no difference that in the interest of uniformity, a shipper, before he can bring his action to recover, must secure a finding of the extent to which the rate is unreasonable and unjust. The basic act itself is unlawful. The prescribed procedural steps can not affect the situation.

At the very outside, no greater effect can be given to Section Six of the Act than to pass the bare legal title to the unlawful exactions to the carrier, leaving in the shipper the beneficial ownership of the money unlawfully exacted from him. In such a case, the carrier becomes a trustee *ex maleficio* for the shipper.

*Angle vs. St. P. M. & O. R. R.*, 151 U. S. 125.

The Master rules this point against the defendant and the railway company. This conclusion is reached without regard to the fact that the Interstate Commerce Commis-

sion, before these excessive charges were collected, had declared them to be unreasonable and unjust. That fact is, of course, an added reason for the conclusion.

[fol. 166] It is next urged that because of the provisions of Section 16 of the Act to Regulate Commerce, the status of interveners is that of general unsecured creditors, with no right to priority over anyone. Under this section of the Act, if the Interstate Commerce Commission shall determine that a shipper is entitled to an award of damages, it shall make an order directing the carrier to pay the sum to which the shipper is entitled on or before a day named. If the carrier does not comply with this order for the payment of money, then the shipper may file in the district court of proper jurisdiction, or in any state court of general jurisdiction, having jurisdiction of the parties, a petition setting forth the causes for which he claims damages and the order of the Commission in the premises. Such suit shall then proceed in all respects like other civil suits for damages except that the order of the Commission is made *prima facie* evidence of the facts therein stated.

Does this section of the Act make the shipper, as to unlawful exactions of freight charges, a general creditor of the carrier against the shipper's will? The Master believes that no such result was intended, and that no such result follows. This section does prescribe a remedy at law which the shipper must pursue. But it does not take away from him his equitable remedy to thereafter impress a trust, if the latter remedy is necessary in order that he may get back that which was unlawfully taken from him. Too much significance must not be attached to the word "damages." If a citizen is robbed of his money, he is damaged. If his property is taken away from him by fraud, he is damaged. If it is taken away from him by duress, he is damaged, and in all three cases he can sue the wrongdoer in tort for damages. He may also sue to impress a trust. The status of the interveners can not be determined by stressing mere procedural terms. We must consider the substance, and not the mere form. We must look back to the facts which lie at the root of the transaction. It is the basic facts that must determine the rights of the interveners and their remedies. We must not blind ourselves to the fact that the claims of the interveners are claims

due to the shippers for excessive charges paid by them to the railroad company for the transportation of freight.

As a part of this same contention, it is urged by learned counsel for defendant and the railway company that all the remedies of the shipper, except the remedy prescribed in Section 16 of the Act, are abrogated by the Act. Section 22 of the Act provides:

[fol. 167] "Nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies."

It is true that this section and Section 9 of the Act have been limited in their scope by the Supreme Court of the United States. The case of *Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Company*, 204 U. S. 426, is, so far as the Master has found, the leading case on the interpretation of these sections. In that case the plaintiff brought suit to recover unreasonable freight charges without having secured any finding from the Interstate Commerce Commission as to the extent to which the rate was unreasonable and unjust. As has been heretofore stated, the purpose of the Act to Regulate Commerce was to secure uniformity of rates and to prevent discriminations of all kinds, as well as to prohibit the charging of unjust and unreasonable rates. The Supreme Court held that if shippers could invoke the aid of the courts without first going to the Interstate Commerce Commission, then one of the objects of the Act—to-wit, the securing of uniformity—would be destroyed. One shipper might go into one Court and secure a judgment. Another shipper, similarly situated, might go into another court and fail. Two shippers might appeal to the same court and get different results, depending upon the evidence presented. Rebates could be secured by fictitious suit, and all of the evils of this character which the Act sought to prevent would be revived.

"A shipper cannot maintain an action against a common carrier to obtain relief from an alleged unreasonable freight rate exacted from him for an interstate shipment, without reference to any previous action by the Interstate

Commerce Commission, where such rate has been filed with that Commission and promulgated as provided by the Act to regulate commerce, and is the rate which it is the duty of the carrier, under that act, to enforce against shippers until changed in accordance with the provisions of that statute, since the independent right of an individual originally to maintain actions to obtain pecuniary redress for violation of the act conferred by section 9 \* \* \* must be confined to such wrongs as can consistently with the context of the act be redressed without previous action by the Commission; and the provision of section 22 that nothing therein 'shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies' cannot be construed as continuing in shippers a common law right [fol. 168] the continued existence of which would be absolutely inconsistent with the provisions of the statute. In other words, the Act cannot be held to destroy itself."

It is, therefore, clear that those common law remedies, the continued existence of which in the shipper would be absolutely inconsistent with the Act, are abrogated. However, it is equally clear that those common law remedies, the continued existence of which would not be inconsistent with the Act, are reserved to the shipper. In considering this proposition it must be borne in mind that repeals by implication are not favored. This rule is clearly stated by the Supreme Court in this Abilene Cotton Oil Co. case:

"In testing the correctness of this proposition, we concede that we must be guided by the principle that repeals by implication are not favored, and indeed that a statute will not be construed as taking away a common law right existing at the date of its enactment, unless that result is imperatively required; that is to say, unless it be found that the preexisting right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

Of course, there is nothing in the remedy these interveners are now pursuing which is inconsistent with the Act to Regulate Commerce, or which is repugnant to the

Act to Regulate Commerce. On the contrary, the existence of this remedy in this case would seem to be necessary in order to bring about and insure the uniformity which the Act to Regulate Commerce was designed to secure. The carriers who remained solvent repaid to the shippers the illegal exactions. This remedy puts the carrier in this case on the same footing with the other carriers. The Master rules these contentions against the defendant and the railway company.

The learned counsel for the interveners argued at length in their brief, that there was nothing in the Act to regulate Commerce, depriving interveners of the remedy pursued in this case. This contention, the Master believes to be entirely sound.

Interveners' counsel also discussed at length the proposition, whether there was anything else depriving their clients of the remedy now employed. After pointing out the basic theory of the trust fund doctrine, namely, the right [fol. 169] to recover money wrongfully and unlawfully, and by duress collected, 39 Cyc. 591, *Oelrichs v. Williams* and *Oelrichs v. Spain*, 15 Wall. 221, 21 L. ed. 1. c. 44, they invoke the fundamental legal maxim, "Ubi jus, ibi remedium," and the corresponding equitable maxim, "Equity will not suffer a wrong without a remedy."

They cite *Broom on Legal Maxims* (8th Ed. p. 191, et seq.), citing the celebrated case of *Ashby v. White*, 2d Ld. Raym. 953, and also the famous opinion of Chief Justice Marshall in the case of *Marbury v. Madison*, 1 Cr. 137, 2d L. ed. p. 60.

In *Pomeroy's Equitable Jurisprudence*, Vol. 1, Sec. 423, this great authority on equity jurisprudence discusses the above corresponding equity maxim, and points out the universality of its application.

Its application has been so often exemplified that it would be useless to attempt to give more than a few controlling authorities.

*Toledo, A. A. & N. M. Ry. Co. v. Penn. Co. et al.* 54 Fed. 746, 1. c. 751, 752.

*Southern California Ry. Co. v. Rutherford, et al.* (Circuit Court, Southern District of California, June 30, 1894) 62 Fed. 1. c. 797, 798.

The Federal and State Courts have often invoked and applied this maxim of equity, and the other maxims, namely, "equity delights to do justice and that not by halves," or as more commonly expressed, "equity will do complete justice." Again, "equity regards that as done, which ought to be done;" and, "equity regards substance, rather than form;" and, "equity imputes an intention to fulfill an obligation." In equity there is no wrong without a remedy.

*Harrigan v. Gilchrist*, 99 N. W. 909.

*Mercantile Trust Co. v. St. Louis & San Francisco*

*Ry. Co. Ogden, et al., interveners*, 69 Fed. 193.

*Sweet v. The Montpelier Savings Bank & Trust Co.*  
69 Kan. 641 (77 Pac. 538).

*Matthews v. Forshund*, 112 Mich. 591.

*Barksdale, et al., v. Finney, et al.* 14 Grattan, 338.

*Williams v. Young*, 81 Atlantic, 1118.

*Trader's Bank v. Fraser*, 162 Mich 315, l. c. 318.

*Converse v. Sickles*, 44 N. Y. Supp. 1080, affirmed in  
161 N. Y. 666.

[fol. 170] *Sugar Refining Company v. Fancher*, 145 N. Y.  
552, l. c. 561.

The cases just cited also announce the proposition that a judgment at law is in many cases not such an election of the remedy as will preclude a bill in equity to impress a trust, because there is no inconsistency whatever between the two proceedings.

In pursuing the remedy pointed out by Section 16 of the Interstate Commerce Act, interveners manifestly made no election, because that was the only remedy available, and because that remedy had to be pursued to its final conclusion before any other remedy became available.

*Southern Pac. Co. v. Goldfield Co.* 290 Fed. Rep. 14,  
L. C. 18.

Since there was no freedom of choice, the doctrine of election of remedies cannot apply in this case.

20 C. J. P. 21.

These propositions, just stated, have not been denied or controverted in any manner by the learned counsel for the defense, and in the Master's opinion they strongly fortify the conclusion above announced.

The second contention of the interveners that their claim should be allowed under the rule which underlies the right to preferential payment of claims for labor, supplies, etc. must be sustained. The operating income of defendant railroad company from June, 1906 to May 27th, was over \$92,000,000.00. During the receivership, the operating revenue largely exceeded the operating expense, including taxes. The receivers turned over to the railway company over \$5,000,000.00 after paying out large sums of money from operating income as interest on bonded indebtedness and for betterments to the road and to equipment, and for the purchase of new equipment.

Equity regards the substance and not the form. These claims represent money illegally exacted from the shippers. They are not, and never have been, voluntary creditors of the defendant railroad. The test of the preferential equity of a claim of this kind is its consideration. The consideration for these claims is the money which the railroad company wrongfully and unlawfully obtained from the shippers. Money, even more than supplies, labor, etc. is necessary for the ordinary operation of a railroad in the usual course of its business. Freight rates are the lifeblood of railroad operations. Without them no railroad could own a [fol. 171] wheel, much less turn one. Under both reason and authority, these claims are preferential under this rule. As was said by the Circuit Court of Appeals in the case of *Love v. North American Company*, in which claims facts identical with the facts in this case were involved.

"Petitioner's claim also comes within the rule which underlies the right to a preferential payment. Freight rates are the lifeblood of railroad operation. It will not be contradicted that, if there were no freight rates paid in the United States, not a wheel would turn on any road. What does the law say in regard to the allowance of preferences? We accept the law as established by the Supreme Court of the United States, and by this court, as follows:

"The class of claims which under the decisions of the Supreme Court may lawfully receive an equitable preference in payment out of the income or out of the corpus of the property of a mortgaged railroad over the bondholders secured by a prior mortgage is limited to claims in-

incurred for the current expenses of the ordinary operation of the mortgaged property in the usual course of the business of the mortgagor. The test of the preferential equity of a claim is its consideration. If its consideration was a current expense of the ordinary operation of the property of the mortgagor incurred in the usual course of its business, for labor, supplies, and like things, necessary for the operation of the railroad, within a limited time, usually not exceeding six months anterior to the appointment of the receiver, the claim may be preferred in payment, otherwise it may not be. \* \* \*

"We think that what has been heretofore said establishes that the claim of the shippers is a claim incurred 'for the current expenses of the ordinary operation of the railroad in the usual course of business of the road.' On principle it cannot be distinguished from payments to sureties who have signed bonds to stay the execution of judgments and claims for holders of unused tickets for refunds, and many other like charges which are habitually allowed, and have been allowed in the receivership of the Frisco Company."

It is urged by learned counsel for the defendant and the railway company that the bondholders received no benefit from these illegal exactions. It seems to the Master that it might as fairly be said that the bondholders received no benefit from the legal freight rates collected by this company. While it must be presumed under the facts shown that the shippers' money always remained in the treasury of the company, yet the shippers' money operated to swell the funds in the treasury of the defendant, and thus made it possible, or at least aided in making it possible, for the bondholders to receive the interest on their bonds.

It is again urged that the preferential allowance of these Surety, it can not be reasonably claimed that the bondholders contracted for the security of unreasonable, unjust and unlawful freight charges. When they took their bonds, they took them with the law written into them which forbade the charging of an unreasonable and unjust freight rate. It follows that the bondholders acquired no interest of any kind in these excessive charges. Therefore, the preferential allowance of these claims takes from the bondholders nothing to which they are entitled.

It is further urged by the defendant railroad and the railway company that under the authority of the case of *Chicago & Alton Railroad Company v. U. S. & Mex. Trust Co.*, 225 Fed. 940, these claims can not be given preferential allowance. In the opinion of the Master, that case, except to the extent that it announces the rule underlying the preferential equity of claims of this kind, has no application to this case. In all respects where that case is applicable to this case, it is in harmony with the *Love* case. In that case, *Chicago & Alton Railroad Company* was attempting to have allowed as a preferred claim car repair balances and money paid for the *Orient Railroad* for fuel, and for the *Orient's* proportionate share of overcharge and loss and damage claims on interline shipments of freight received by the *Chicago & Alton* from the *Orient*. In that case there was no surplus income and no diversion of income. The *Chicago & Alton* was not a shipper from whom the *Orient* had unlawfully exacted freight rates. It was a carrier and had a balance due it under some interline agreement. It had paid to others some overcharges of some kind, part of which were chargeable to the *Orient*. Under the authority of the *Love* case, the claims involved in the *Chicago & Alton* would not be entitled to preferential allowance.

It is contended by the defense that interveners' claims are not preferentially allowable under this rule in any event because they accrued more than six months prior to the appointment of the receivers. The Master can not agree [fol. 173] with this contention. It must be borne in mind that these interveners are not voluntary creditors. It must also be borne in mind that while the shipper's causes of action accrued at the time the illegal exactions were made, yet their rights of action did not accrue until the Interstate Commerce Commission acted in January, 1914. Their rights of action did not become complete until June 15, 1914, which was the limit of time given by the Interstate Commerce Commission for the defendant to pay these claims. In the case of *Love v. North American Company*, *supra*, the six months' rule was not technically applied. In the *Love* case, the orders of the Corporation Commission fixing the rates were made on July 3d, 7th and 31st and on September 14, 1911. The appeal from the orders taken by the railroad company was not decided until December 5, 1912.

The judgment of the Supreme Court made the rates approved by it effective as of the dates of the original orders. Therefore, part of the overcharges in the Love case were collected as much as twenty months before the receivership.

However, the six months' rule is not an inflexible rule. The period before the receivership in which claims of this character must accrue depends upon circumstances. The six months' period is usually fixed because usually that is a reasonable period, but it is discretionary with courts to allow a longer period if circumstances warrant it. The time must be reasonable, and what is a reasonable time depends upon the facts of each particular case.

North American vs. Lamont, 69 Fed. 496.

Southern Ry. Co. vs. Carnegie, 76 Fed. 496.

Blair vs. Ry. Co., 22 Fed. 471.

Mr. Justice Brewer says in Blair vs. R. R. Co. 22 Fed. 471:

"There is no arbitrary time prescribed, and it should be only such reasonable time as, in the nature of things and in the ordinary course of business, would be sufficient to have such claims settled and paid. Six months is the longest time I have noticed as yet given. Ordinarily I think that is ample. Perhaps, in some large concerns, with extensive lines of road and a complicated business, a longer time might be necessary."

Where equity seemed to demand it, the Federal Courts have not hesitated to depart from the short six months' rule. In Atkins vs. Railroad Company, 3 Hughes 307, a claim which accrued twenty-two months before the receiver-[fol.174] ship was allowed. In Hale vs. Frost, 99 U. S. 389, a three year period was allowed. In Burnham vs. Bowen, 111 U. S. 776, eleven months was allowed. In Union Trust Company vs. Morrison, 125 U. S. 591, a three year period was allowed. In New York Guaranty Trust Company vs. Ry. Co., 83 Fed. 365-370, a claim for cable delivered twenty-six months before the receivership was allowed. In that case the Court said:

"The time that elapsed between the delivery of the cable, and the appointment of the receiver by the state court, would therefore be about twenty-six months, or a little over

two years. But it is to be observed that the intervener began suit in the state court of Washington before the receiver was appointed, on October 5, 1893, which would be about twelve months after the delivery of the cable. It recovered judgment on April 3, 1896, which was subsequent to the appointment of the receiver by the state court. The period of time that transpired between the time that the intervener instituted its action and the appointment of the receiver can not properly be included in this computation of time. Such delay as there was, incidental to the proceedings in the state court of Washington, cannot be imputed to, nor tend to the prejudice of the intervener's rights. Without elaborating upon the proposition any further, we are of the opinion that the claim for the cable in question should be made a preferred debt."

It is plain that whatever delay there was in this case, chargeable largely to the vigorous opposition made by the railroad company, can not be imputed to or tend to prejudice the interveners in their rights. The Master rules this point against the defendant and the railway company.

The Master now passes to the third ground upon which interveners base their right to the preferential allowance of their claims—to-wit, that a sound public policy requires that they be made whole. That a railroad company owes a duty to the public to charge only just and reasonable rates is certain. It may be said that the right to charge tolls at all is a part of the prerogative of sovereignty.

Blake vs. Railroad, 19 Minn. 418.

Morgan vs. Louisiana, 93 U. S. 217.

The defendant railroad company got the money of these interveners and their assignors into its treasury by violating its public duty to charge only just and reasonable rates. When the Interstate Commerce Commission determined the extent to which the rates were unreasonable and unjust, it became the bounden duty of the railway company to re-[fol. 175] store to the shippers the excessive charges exacted from them. This was a duty not only due to the shippers, but it was a duty owing to the public whose laws it had violated. It is a duty which the defendant would have had to comply with had it not gone into the hands of

a court of equity. Surely, it is a duty that a court of equity ought not to aid the defendant in escaping. When the railroad company took this money from the shippers by duress, it took something that it had no right to. Having no right to it, neither its creditors nor its bondholders, nor its stockholders can complain if it is compelled to make restitution. The Master rules this point in favor of the interveners.

Love vs. North American, 229 Fed. l. c. 107.

Mercantile Trust Co. vs. St. L. & S. F. R. R. Co., 69 Fed. 193.

The rule announced by Judge Caldwell in the Mercantile Trust Company case, *supra*, was re-announced by Judge Garland in the Love case, and these two cases on this point contain the strongest statement of the rule of public policy here invoked, which the Master has been able to find in the books. This rule is so obviously just that the Master fails to see how it can be questioned, or its application denied to the facts of this case.

It is asserted by learned counsel for the defendant and the railway company that the Love case is not applicable to this case—first, because in the Love case overcharges were collected in defiance of a state statute, second, because in that case, state made rates were superseded and a bond given for the return of the overcharges, third, because in the Love case, the rates involved were intrastate while in this case they are interstate, and fourth, because in the Love case the interpretation of the laws of Oklahoma [was] involved, while in this case the Act to regulate Commerce is to be interpreted.

The points of difference, if they are points of difference, only add, in the Master's opinion, to the strength of intervenor's case. The first mark of differentiation is based upon a wrong premise. In the Love case, the rates were not collected in defiance of a state statute. The statutes of Oklahoma gave the Corporation Commission the power to fix intrastate rates. By this same law a railroad company was given the right of an appeal from the orders of the Commission. Under the statute, in the event of an appeal, the giving of a bond operated to supersede the orders made by the Commission. In the Love case, the Corpora-

[fol. 176] tion Commission made the orders prescribing the rates. The railroad company appealed therefrom and gave a bond which operated during the pendency of the appeal to supersede the orders. While the supersedeas continued, the railroad company had a right to exact the rates charged by it. In the Love case, therefore, the railroad company collected the rates in the teeth of nothing, while in this case, these excessive charges were collected in violation of Section One of the the Act to Regulate Commerce and in the teeth of the order of the Interstate Commerce Commission finding the rate to be unreasonable, unjust and unlawful to the extent of three cents a hundred pounds.

The second point of difference insisted upon by counsel is in the opinion of the Master without merit. In the Love case, the Court said:

“We must not be deceived as to the true status of this claim, nor allow the bond \* \* \* to blind us to the fact that the claim is one due the shippers for excessive charges paid by them to the Frisco Company for transportation of freight.”

While in the Love case, the orders of the Corporation Commission were superseded during the pendency of the appeal by the giving of the bond, in this case there was a continuous violation of the law denouncing the collection of unjust and unreasonable rates. It seems to the Master that in this case there is added reason for the application of the principles announced in the Love case.

The third point of difference urged by counsel seems to present a distinction without a difference. In both cases the railroad company took money from the shipper to which it was not entitled. As to the fourth point, the Master is unable to see wherein the Court in the Love case interpreted any law of Oklahoma.

In the Love case the Court found that in collecting a rate in excess of that finally fixed by the judgment of the Supreme court of Oklahoma, the railroad company had exacted from the shipper an excessive charge to which it was not entitled. While during the pendency of the appeal it was not violating any law, yet it obtained from the shipper an excessive charge for the transportation of freight.

Even if we were to give to Section Six of the Act to Regulate Commerce the effect contended for by the defense, we would only thereby make the Love case and this case [fol. 177] exactly analogous. But, as the Master has heretofore ruled, the exaction of the excess charges in this case were unlawful from the beginning. In the opinion of the Master, therefore, there is added reason for the application of the principle in the Love case to this case. The learned counsel for defendant raised six other points as to the Love case, all of which have been carefully examined and are found to be without merit.

### Supplemental Petitions of Interveners

The interveners base their right to recover under their supplemental petitions the unpaid attorneys' fees, taxed as costs, on a different equity than that involved in their main case. It is alleged in the supplemental intervening petitions that the receivers were by the order of this Court authorized to defend all suits against the defendant railroad company, that the receivers, through their attorneys, appeared in Cause No. 4308 in the District Court of the United States for the Western Division of the Western District of Missouri and conducted the defense of said cause in the District Court, and appealed the same to the Circuit Court of Appeals; that after the appeal to the Circuit Court of Appeals the railway company conducted the defense of said cause; that the receivers, when the appeal was taken to the Circuit Court of Appeals, caused a surety company to make an appeal bond in the name of the defendant for \$3,500.00, conditioned that the defendant would answer all costs if it failed to make good its appeal; that the amount of the attorneys' fees adjudged by the Court to intervenor E. B. Spiller, and taxed as costs, was \$4,675.32; that upon the affirmance by the Supreme Court of the United States of the judgment of the District Court, the railway company paid the clerk's costs and the sum of \$3,351.19 of the attorneys' fees taxed as costs, aggregating \$3,500.00, the penalty of the bond; that there was a balance left unpaid on the attorneys' fees taxed as costs of \$1,324.13; that the costs consisting of attorneys' fees were incurred and made by the action of the receivers in de-

fending and litigating said Cause No. 4308. The Master finds these facts to be true. When the receivers were appointed, they were by the order of this Court authorized to

“Institute and prosecute such suits in their own names as receivers, or in the name of the company, as their attorneys may advise, to defend such suits as may be brought against them and those now pending or hereafter brought [fol.178] against the company, which affect or may affect the property of which they are now or may become receivers.”

In the opinion of the Master, neither the receivers nor the railway company are legally liable for these costs. The judgment for costs is against neither the receiver nor the railway company. Ought they in equity to be paid by the receivers? Should the Court in doing equity, order these costs to be treated as a part of the expense of the administration?

“Equity delights to look behind the forms in which things are clothed at the real substance of them.”

While it may be that the receivers did not incur these costs, yet they did cause them to be incurred. In the name of the railroad company, they vigorously and persistently resisted the intervener. They did this under the provision of the order of their appointment which directed them to defend all suits against the defendant which affect or may affect the property of which they are now or may become the receivers.” They did this undoubtedly for the protection of the property. The defendant itself had no interest in the outcome of the litigation. The only persons really interested in the defense were the receivers, acting as the officers of the Court. To all intents and purposes, this Court was really conducting the defense. If the receivers had become parties to the suit, they would, of course, be legally liable for the costs. As has been stated, this Court was the real party defendant, acting through its officers, the receivers. It seems to the Master that it would not be equitable for a court of equity to cause these costs to be incurred and then refuse to compel its officers to pay them. Of course, if the receivers should pay them, then the railway company should pay them.

The Master rules that the claim of intervener, E. B. Spiller, for attorneys' fees taxed as costs in case No. 4308, should be allowed, and that an order should be made upon the railway company to make payment thereof.

The claim of E. B. Spiller et al. in cause No. 4320 for \$365.29 attorneys' fees, taxed as costs, should be allowed for the same reason and ordered paid.

Thomas T. Fauntleroy, Special Master.

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[fol. 179] IN UNITED STATES DISTRICT COURT

[Title omitted]

Consolidated Cause Final

In the Matter of the Intervention of E. B. SPILLER and Others. Intervening Petition and Supplemental Intervening Petition No. 402.

In the Matter of the Intervention of E. B. SPILLER. Intervening Petition and Supplemental Intervening Petition No. 403

MOTION FOR CONSOLIDATION OF PETITIONS FOR INTERVENTION—Filed March 8, 1922

Come now St. Louis-San Francisco Railway Company and St. Louis and San Francisco Railroad Company, parties hereto, and respectfully represent and state to the court:

That at the hearing before the Special Master heretofore appointed in this cause, the above interventions were jointly heard by said Special Master and tried and considered as one cause by said Special Master and the parties hereto, and that the Special Master has filed a joint report herein in said interventions as a consolidated cause, yet in fact no order has been made consolidating said interventions; that it is to the interest of all the parties herein that an order be entered consolidating said interventions into one cause for further hearing and determination.

Wherefore, your applicants pray that an order be made and entered herein consolidating said interventions into one cause in the manner and for the purposes herein stated.

W. T. Evans, E. T. Miller, Solicitors for Applicants.

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IN UNITED STATES DISTRICT COURT

ORDER CONSOLIDATING PETITIONS OF INTERVENTION—Filed  
March 8, 1922

The court having duly heard and considered the application of St. Louis-San Francisco Railway Company and [fol. 180] St. Louis and San Francisco Railroad Company filed herein for the making and entry of an order consolidating the above styled interventions, and the court now being fully advised in the premises,

It is ordered that said interventions be, and the same hereby are, consolidated into one consolidated cause under the style "In the Matter of the Intervention of E. B. Spiller, Et Al., "Consolidated Cause," for all purposes for the further consideration and determination thereof.

(Signed) Walter H. Sanborn, Senior Circuit Judge.

St. Louis, Missouri, March 8th, 1922.

We hereby consent to the making and entry of the foregoing order.

(Signed) D. A. Murphy, S. H. Cowan, John S. Leahy, Walter H. Saunders, Solicitors for said Interveners.

## IN UNITED STATES DISTRICT COURT

[Title omitted]

## Consolidated Cause Final

Consolidated under the Style "In the Matter of the Interventions of E. B. SPILLER et al. Consolidated Cause"

EXCEPTIONS OF ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY TO REPORT OF SPECIAL MASTER—Filed March 18, 1922

[fol. 181] Comes now St. Louis and San Francisco Railroad Company, a party herein, and excepts to the report of the Special Master filed in this cause in the matter of the intervening petition and petition supplemental thereto of E. B. Spiller et al., No. 402, and the intervening petition and petition supplemental thereto of E. B. Spiller, No. 403, said interventions having been duly consolidated under the style "In the Matter of the Interventions of E. B. Spiller et al., Consolidated Cause," and for cause of exceptions states.

1. The Special Master erroneously recommended to the Court (Rep. pp. 3-4) that judgment be entered herein in favor of interveners, E. B. Spiller, et al., in the sum of \$3,652.97, with interest thereon, and the sum of \$365.29 as attorneys' fees, and each of said sums, and that the same be adjudged prior in lien and superior in equity to the refunding mortgage and the general lien mortgage of defendant and directed to be enforced against the property conveyed to St. Louis-San Francisco Railway Company, and that the costs of this proceeding be taxed against defendants herein.

The Special Master should have recommended to the Court that a judgment be entered herein disallowing said claims, and each of them, of said interveners, and that the costs of the proceeding be taxed against said interveners, or that said sum of \$3,652.97 be allowed as a general unsecured creditor's claim, and said sum of \$265.29 be disallowed.

2. The Special Master erroneously recommended to the Court (Rep. pp. 2-3) that judgment be entered herein in

favor of intervener E. B. Spiller, in the sum of \$30,212.31, with interest thereon and the sum of \$1,235.13 as attorneys' fees, and each of said sums, and that the same be adjudged prior in lien and superior in equity to the refunding mortgage and the general lien mortgage of defendant and directed to be enforced against the property conveyed to St. Louis-San Francisco Railway Company, and that the costs of this proceeding be taxed against defendants herein.

The Special Master should have recommended to the Court that a judgment be entered herein disallowing said claims, and each of them, of said intervener, and that the costs of this proceeding be taxed against said intervener, of that said sum \$30,212.31 be allowed as a general unsecured creditor's claim, and said sum of \$1,235.13 be disallowed.

3. The Special Master erroneously found as a conclusion of fact (Rep., p. 21) that the Interstate Commerce Commission [fol. 182] on August 16th, 1905, found that the rates charged and collected by defendant involved in this intervention were unlawful.

The Special Master should have found as a conclusion of fact that the rates so charged and collected were the only lawful rates that defendant was permitted to charge and collect, and that the Interstate Commerce Commission did not pronounce said rates unlawful.

4. The Special Master erroneously found as a conclusion of fact (Rep., p. 22) that the Interstate Commerce Commission on April 14th, 1908, pronounced the rates so charged and collected by the defendant to be unlawful.

The Special Master should have found as a conclusion of fact that said rates were the only lawful charges that could have been charged and collected by defendant, and that said Commission did not pronounce said rates unlawful.

5. The Special Master erroneously found as a conclusion of fact (Rep., p. 23) that the reparation case before said Commission was proceeded with interveners continuously and without unnecessary delay.

The Special Master should have found as a conclusion of fact that interveners failed to proceed with said reparation case continuously and without unnecessary delay.

6. The Special Master erroneously found as a conclusion of fact (Rep., p. 24) that said Commission had ordered de-

fendant to pay freight charges which defendant had illegally and unlawful exacted from interveners.

The Special Master would have found as a conclusion of fact that defendant did not illegally or unlawfully exact any freight charges from interveners.

7. The Special Master erroneously found as a conclusion of fact (Rep., pp. 28-29) that prior to August 29th, 1916, neither interveners nor their attorneys had any notice or knowledge of any order made by this court fixing the time with which claims should be filed in this cause and in this court, and that on said date attorneys for interveners learned for the first time that such an order had been made and that the time fixed by the order had then expired.

The Special Master should have found as a conclusion of fact that interveners and their attorneys not only had actual [fol. 183] notice of the order of this court fixing the time within which claims should be filed herein, but that they were chargeable in law and in equity with notice thereof, both by reason of the fact that such notice was duly published as required by this court and by reason of the fact that interveners and their attorneys were familiar with and charged with notice of proceedings in this cause, including the orders fixing the time within which claims should be filed herein.

8. The Special Master erroneously found as a conclusion of fact (Rep., pp. 30-31) that under the reorganization plan the holders of the \$5,000,000 of first preferred stock of the old company, and the holders of \$16,000,000 of second preferred stock of the old company were to receive a bonus in preferred and common stock in the new company; that the

"Public Service Commission of Missouri refused to approve that part of the plan and the plan was modified, and under the plan as modified, the holders of five million dollars of first preferred stock of the railroad company were to receive, and did receive, five million dollars of the new common stock, the holders of the sixteen million dollars of second preferred stock of the old company were to receive, and did receive, sixteen million dollars of the common stock of the new company and the holders of the twenty-nine million dollars of common stock of the old were to receive, and did receive, \$24,650,000 of the common stock of the new

company. In other words, the stockholders of the old company were to receive, and did receive, \$45,650,000.00 of the stock of the new company as representing their equity in the properties without payment of anything by them therefor.

"The fact that under the plan, these stockholders were required to buy \$50.00 worth of the prior lien bonds for each share of stock does not affect the situation. These bonds were secured by a first mortgage on all of the properties of the reorganized company and presumptively were worth par.

"In the application filed by the reorganization managers and by the St. Louis-San Francisco Railway Company with the Public Service Commission for authority to issue securities, it was stated and shown that the value of the railroad properties and of properties not used for railroad purposes and the cash to be received from the receivers was \$321,776,000.00. This was the value accepted and found to exist by the Public Service Commission of Missouri, and [fol. 184] is accepted as the value of such properties by the Master. The total of the securities, bonds, preferred stock and common stock of the new, or St. Louis-San Francisco Railway Company, to be issued under the plan as authorized by the Public Service Commission, was \$321,688,886.00, or so much thereof as might be necessary."

The Special Master should have found that every stockholder, every bondholder and every unsecured creditor who had complied with the orders of this court by filing his claim herein as thereby required, had received an offer to permit him to participate in the benefits of the purchase of defendant's property on the equitable basis upon which others of his class were permitted to participate therein under the plan of reorganization, and that the purchase price of said property was not only the amount bid at the sale, but that amount plus the value of all that part of the bonds, unsecured claims and stock above the amount paid thereon out of the amount bid, which was exchanged for stock and bonds in the new Railway Company.

The Special Master should have further found as a conclusion of fact and of law that this court had previously and particularly in the case of St. Louis-San Francisco Railway

Company vs. M'Elvain, 253 Fed. 123, adjudged and decreed that the sale of said property of defendant and the acquisition thereof by St. Louis-San Francisco Railway Company was in all things fair, valid and equitable and not subject to attack by interveners in this proceeding, or elsewhere.

9. The Special Master erroneously found as a conclusion of fact and of law (Rep., p. 32) that

"No offer was ever made by the railroad company or the receivers, or by anybody else to pay the claims of interveners and no tender of any payment either in money or otherwise was ever made by any one to them. On the contrary, the railroad company, the receivers and the railway company, through their attorneys, have constantly since the making of the order of reparation by the Interstate Commerce Commission in 1914, and prior thereto, contested every effort made by interveners to establish their claims. The interveners have from the beginning shown the utmost diligence in the prosecution of their claims and have been guilty of no laches."

The Special Master should have found as a conclusion of fact and of law that no offer was required to be made to any unsecured creditor who had not filed his claim in this cause pursuant to the orders of this Court, and further that [fol. 185] interveners have been guilty of such neglect and laches as prevent any consideration being given to their claims herein.

10. The Special Master erroneously found as a conclusion of fact (Rep., p. 33) that from August 16th, 1905, until November, 1908, defendant exacted from interveners and their assignors freight charges which had been found by the Interstate Commerce Commission to be unreasonable, unjust and unlawful, and that said freight charges were exacted in the face of the positive finding of said Commission that they were unjust, unreasonable and unlawful.

The Special Master should have found as a conclusion of fact that the rates so collected by defendant were the only lawful rates that it was entitled to collect.

11. The Special Master erroneously found as a conclusion of fact (Rep., p. 34) that

"From June 29, 1906, until May 27, 1913, the date when receivers were appointed herein on the bill of complaint of the North American Company, a general creditor, the net operating income of the railroad company was \$92,471,350.28. In other words, the operating income exceeded the operating expense, including taxes, by that sum. From July 1, 1912, to May 27, 1913, operating income exceeded operating expenses, including taxes, by \$11,752,379.60. In fact, there was not a year from June 30, 1906, to May 27, 1913, except the year ending June 30, 1908, when the operating income exceeded operating expenses, including taxes, by \$9,944,600.89—that the operating income did not exceed the operating expenses including taxes by over \$11,000,000.00.

"Foreclosure proceedings by the bondholders were first started May 22, 1914, or nearly one year after the receivers were appointed on the bill of complaint of the general creditor, North American Company. From May 27, 1913, to April 30, 1914, the operating or current receipts exceeded the operating expenses, including taxes, by \$12,930,858.89, the earnings being during such period \$48,380,219.16 and the operating expenses being \$35,449,360.17. During every year from June 30, 1906, to May 27, 1913, the defendant company paid large sums in excess of the excess charges collected from interveners and their assignors, by way of interest on its mortgaged indebtedness and for betterments and improvements to its railroad and equipment and by way of purchase of new equipment. From May 27, 1913, to May 22, 1914, the receivers paid out large sums by way of betterments to road and equipment and by way of interest on its mortgaged indebtedness."

[fol. 186] The Special Master should have found as a conclusion of fact from the facts admitted in this cause, that the gross receipts of defendant during each year from June 1st, 1906, to May 27th, 1913, exceeded defendant's operating expenses in an amount in excess of interveners' claims, including interest; that during each of said years defendant expended large sums of money for improvements, equipment, interest on bonded indebtedness and in current expenses incurred in the ordinary operation of its lines of railroad; that during the period of the receivership, the gross operating receipts of said receivership each year were

in excess of the operating expenses of said receivership, such excess amounting each year to more than the total of interveners' claims with interest; that during the period of said receivership, said Receivers paid out under orders of this court large sums of money for improvements, betterments, equipment, interest on bonded indebtedness and for current expenses for the operation of the lines of railroad during said receivership, and that the term "large sums of money" as used herein means at least several hundred thousand dollars.

12. The Special Master erroneously found as a conclusion of fact (Rep., p. 35) that during each year from August, 1906, to May, 1913, there was at all times in the treasury of defendant an amount of money in excess of interveners' claims, with interest, and that on May 27, 1913, defendant had on hand and turned over to said Receiver over \$600,000.00 in cash.

The Special Master should have found as a conclusion of fact that during said years defendant at all times had cash in hand in excess of said claims of interveners, with interest thereon, and that defendant, upon the appointment of Receivers, turned over to said Receivers the sum of approximately \$338,000.00.

13. The Special Master erroneously found as a conclusion of fact (Rep., p. 35) that freight charges collected by defendant were not kept by defendant in a separate fund, but were mingled with the general receipts of defendant, and that the depositories of defendant had no instructions to keep said charges in a specific fund, and did not keep the same in a separate account, and that defendant had always on hand in its treasury an amount in excess of the aggregate of interveners' claims, with interest.

The Special Master should have found as a conclusion of fact that said sums collected from interveners as alleged [fol. 187] overcharges were not kept by defendant in a separate or designated account or fund, nor separated from other gross receipts of defendant, derived from the operation of its lines of railroad; that said moneys so collected by defendant were deposited in banks with other moneys of defendant in defendant's general account, and said banks had no instructions from defendant to keep said moneys in

a specific fund, nor to refrain from paying the same out in the ordinary course of business on defendant's checks against its fund in said banks, nor did said banks keep said moneys in a separate account, and that defendant checked out of its deposits in each of said banks during each year from June 1st, 1906, to May 27th, 1913, sums of money largely in excess of said alleged overcharges, and deposited in said banks during each of said years sums of money largely in excess of said alleged overcharges—all as contained in the agreed stipulation of facts filed in this cause.

14. The Special Master erroneously found as a conclusion of fact (Rep., p. 35), that

“Subsequent to the receivership the claims of the Corporation Commission of the State of Oklahoma, for overcharges exacted from shippers in Oklahoma, amounting to \$76,627.35, was allowed as a preferred claim and paid. A claim for \$12,124.51, in favor of a surety company, was allowed on account of similar overcharges as a preferred claim and paid. There was no other depletions of the fund turned over by the railroad company to the receivers. After the appointment of the receivers, the receivers paid out large sums of money for supplies, etc., purchased prior to the receivership. On the other hand, the railroad company turned over to the receivers, and the receivers received, supplies, etc., of equal or greater value.”

The Special Master should have found as a conclusion of fact that the claims against defendant adjudged by the Court as preferential, and which the Receivers were directed by the Court to pay, and did pay during the first month of the receivership, were largely in excess of the amount of money turned over by defendant to said Receivers on their appointment, and that all of the money received by said Receivers from defendant, as aforesaid, was paid out by said Receivers in discharging such claims long prior to any assertion by interveners herein of their said claims.

15. The Special Master erroneously found as a conclusion of fact (Rep., p. 36) as follows:

“After the receivers were appointed they paid out large sums of money to other railroad companies in settlement

[fol. 188] of car service and traffic balances. Settlement between railroads, however, on this kind of business were made on the basis of net balances, and while for the first few days of the receivership the disbursements on account of this class of claims exceeded the receipts, yet the receipts on account of this class of business accruing prior to the receivership largely exceeded the disbursements on account of this class of business. According to the first bi-monthly report of the receivers, the receipts on account of this class of business accruing prior to the receivership were \$395,374.71 and the disbursements \$396,286.58. According to the second bi-monthly report of the receivers the receipts were \$229,953.84 and the disbursements \$191,198.71. From December 31, 1908, to May 15, 1913, the defendant railroad company issued \$55,257,220.00 of its general lien fifteen twenty-year gold bonds and between 1910 and 1912 it issued \$2,444,000.00 of its secured gold notes, and between June 21, 1909, and November 21, 1911, the Kansas City, Ft. Scott & Memphis issued \$3,421,950.00 of its refunding mortgage four per cent bonds. There is no showing for what purpose these bonds were issued or to what use the proceeds were put. During all of said years when these bonds were being issued, the net operating income, that is to say—the excess of operating income over operating expenses, including taxes—was in excess of \$11,000,000.00 each year."

The Special Master should have found as a conclusion of fact that the first bi-monthly report of said Receivers shows receipts in settlement of car service and traffic balances with other railroads of \$395,374.21, and disbursements of \$396,286.58, said receipts representing accrued items on business prior to the receivership, and that during the same period the Receivers collected on receivership business only \$4,377.15; that the disbursements above stated were accrued payments on business transacted prior to receivership, and the amount accrued on receivership business during such period was \$32,754.63; that said Receivers received, as shown by said bi-monthly report, on business accrued prior to their appointment, \$2,245,153.79, and paid on business accrued prior to their appointment, \$3,985,121.02, and that in addition to the payment last aforesaid said Receivers also paid prior to February 18th, 1914, preferred claims against defendant, which were duly presented, filed and heard by the Special Master, aggregating \$2,229,950.47.

16. The Special Master erroneously found (Rep., p. 37) all of the issues raised by the pleadings in favor of interveners.

[fol. 189] The Special Master should have found all of the issues raised by the pleadings in favor of this exceptor.

17. The Special Master erroneously found as a conclusion of law (Rep., p. 39) that the pleas in bar of this exceptor are without merit.

The Special Master should have found as a conclusion of law that said pleas in bar constituted a complete bar to interveners' claims herein.

18. The Special Master erroneously found as a conclusion of law (Rep., p. 40) that interveners were not guilty of laches, but, on the contrary, were persistently diligent.

The Special Master should have found as a conclusion of law that interveners were guilty of laches, and that they were persistently lacking in diligence, and that it was the duty of interveners, in order to have a hearing of their claims, to file the same in this court within the time and as provided by the interlocutory decree and subsequent orders extending the time therein provided.

19. The Special Master erroneously found as a conclusion of law (Rep., p. 42) that neither the interveners nor their counsel had notice or knowledge of the making of the interlocutory decree, or the final decree, until long after the time therein fixed for filing claims had expired.

The Special Master should have found as a conclusion of law that both interveners and their counsel had notice or knowledge, actual, or, if not actual, constructive, of the provisions of said interlocutory decree and said final decree long prior to February 1st, 1916.

20. The Special Master erroneously found as a conclusion of law (Rep., p. 42) that the fact that holders of other claims pending before the Interstate Commerce Commission filed their claims herein as required by the interlocutory decree is not material, so far as interveners are concerned, and that if interveners had filed their claims herein as required by the interlocutory decree, an effort would have been made to have them dismissed on the ground that the procedure prescribed by the Interstate Commerce Act was exclusive.

The Special Master should have found as a conclusion of law that it was the duty of interveners, notwithstanding the pendency of their claims with the Interstate Commerce Commission, to file said claims herein pursuant to the interlocutory decree if they desired to protect their rights in respect thereof, and that their failure so to do bars the consideration of said claims in this proceeding.

21. The Special Master erroneously found as a conclusion of law (Rep., p. 43) that no offer of settlement of any kind was ever made to interveners, and that, by reason thereof, under the authority of *Northern Pacific Ry. Co. vs. Boyd*, there has never been any distribution of the assets of this estate.

The Special Master should have found as a conclusion of law that interveners, by failing to file their claims as provided by the interlocutory decree, forfeited all rights to the consideration thereof in this cause, and should have further found, as was held by this Court in the *McElvain* case, *supra*, that the contract made between the Court and this exceptor in this cause was and is in all things just and valid, and that the same cannot now be attacked by interveners.

22. The Special Master erred in his conclusion of law (Rep., pp. 43 and 44) construing the purpose and effect of the final decree entered in this cause, and particularly Articles IX and X thereof, and in holding that claims such as these might be filed after the entry of said final decree.

The Special Master should have found as a conclusion of law that paragraph B, Article IX, of the final decree relates to only such claims as were filed pursuant to the terms of the interlocutory decree and the nature of which had not been at the time of the entry of the final decree determined by the Court, and that by Article X of said final decree the Court contracted with this exceptor that it should not be required to pay claims which had not been filed pursuant to the terms of the interlocutory decree except such claims as arose subsequent to the entry of said decree, and then only on the conditions prescribed in the final decree.

23. The Special Master erroneously found as a conclusion of law (Rep. p. 44) that the word "arise" used by the Court in Clause 2, Article X, of the final decree as follows: "Any claim or demand which may arise after the entry of this decree," is not used in the sense of "accrue."

The Special Master should have found as a conclusion of law that interveners' claims arose long prior to the entry of said final decree, and that the same were therefore barred thereby.

24. The Special Master erroneously found as a conclusion of law (Rep., p. 44) that interveners' claims were such claims as the Receivers were required to list with this Court [fol. 191] under the provisions of Article X of the final decree.

The Special Master should have found as a conclusion of law that under said Article X of the final decree said Receivers were only required to list with this Court such claims against defendant as said Receivers had at that time been informed were claimed to be prior in lien or superior in equity to the Refunding Mortgage or General Lien Mortgage of defendant, and should have further found as a conclusion of law and of fact that interveners did not attempt to present their claims herein, or to assert any claim of preference in respect thereof, until long subsequent to the date of the entry of said final decree.

25. The Special Master erroneously found as a conclusion of law (Rep., p. 44) that interveners' claims arose after the entry of the final decree.

The Special Master should have found as a conclusion of law from the facts in this case and from the admissions of interveners, that their said claims arose long prior to the entry of the final decree.

26. The Special Master erroneously found as a conclusion of law (Rep., pp. 44 and 45) that the fact that no appeal was taken by interveners from the final decree does not affect interveners' rights to assert their claims, and that interveners had no notice or knowledge of either the interlocutory decree or the final decree, and that they were not parties to the cause either personally or by representation.

The Special Master should have found as a conclusion of law that interveners are attempting to assert their claims herein pursuant to the terms of said final decree; that they had notice or knowledge of the interlocutory decree and the final decree; that they were, when said decrees were entered, parties to this cause either personally or by repre-

sentation, and that by failing to have either the final decree or the order confirming the sale amended by the Court to protect their alleged claims, and by failing to appeal from the refusal of the Court to so amend said decrees, or either of them, they are estopped to assert their claims in this proceeding.

27. The Special Master erroneously found as a conclusion of law (Rep., p. 45), that St. Louis-San Francisco Railway Company took defendant's property subject to interveners' claims.

[fol. 192] The Special Master should have found as a conclusion of law that St. Louis-San Francisco Railway Company took defendant's property free and undischarged of all liability in respect of interveners' claims.

28. The Special Master erroneously found as a conclusion of law (Rep., p. 45) that the sale of defendant's property, made and confirmed by this Court, and under which St. Louis-San Francisco Railway Company claims, was a mere form and void between interveners and St. Louis-San Francisco Railway Company.

The Special Master should have found as a conclusion of law that he was bound by the orders and decrees in this cause adjudicating and decreeing that said sale was in all respects valid, and that he was bound by the opinion of this Court in the McElvain case, *supra*, so holding.

29. The Special Master erroneously found as a conclusion of law (Rep., p. 45) that the Receivers, the reorganization managers and St. Louis-San Francisco Railway Company, all knew of interveners' claims, and that it was claimed that they were prior in right and superior in equity to the claims of all other creditors, including bondholders.

The Special Master should have found as a conclusion of law that at the time the contract was made between the Court and St. Louis-San Francisco Railway Company, interveners had not presented their claims as required by the interlocutory decree, or otherwise, nor had they asserted any priority in right of superiority in equity in respect thereof to the claims of other creditors, or bondholders.

30. The Special Master erroneously found as a conclusion of law (Rep., p. 46) that the rule applied in the Boyd case applies in this case.

The Special Master should have found as a conclusion of law that this Court, whose servant he is, had expressly held in said McElvain case that the rule applied in the Boyd case does not apply to this case.

31. The Special Master erroneously found as a conclusion of law (Rep., p. 46) that interveners are not barred from a presentation and consideration of their claims on their merits, either by the orders limiting the time within which claims were to be presented, or by inexcusable laches of interveners.

The Special Master should have found as a conclusion of law that these questions were not decided by Judge Sanborn in the order permitting the filing of these claims, but that these interventions were referred to the Special Master in order that he might report his conclusions to the Court on all questions involved, including the pleas in bar, contained in the answer of this exceptor.

32. The Special Master erroneously found as a conclusion of law (Rep., page 47) that the collection of an excessive freight rate by a railroad company is as to the excess over a reasonable rate wrongful and unlawful, and that such collection is under duress, and that such railroad company becomes a trustee ex maleficio for the shipper.

The Special Master should have found as a conclusion of law that the alleged excessive rates involved herein were not collected under duress; that they were not wrongfully and unlawfully collected, and that defendant did not become a trustee ex maleficio for interveners.

33. The Special Master erroneously found as conclusion of law (Rep., page 49) that it will be presumed that the money collected as excess charges from interveners was a part of the money in the treasury of the company which passed to the Receivers.

The Special Master should have found as a conclusion of law that, upon the admitted facts in evidence, whatever excess charges were collected from interveners prior to November, 1908, were long since expended by defendant, and should have further found that interveners truthfully stated that said excess sums of money were used by defendant as were other freight charges collected by it.

34. The Special Master erroneously found as a conclusion of law (Rep., page 49) that said excess overcharges were unlawfully collected.

The Special Master should have found as a conclusion of law that in collecting the regular tariff rates defendant collected the only rate that it could lawfully collect, and that defendant could not unlawfully collect the only lawful rate.

35. The Special Master erroneously found as a conclusion of law (Rep., page 53) that defendant became a trustee ex maleficio for interveners.

[fol. 194] The Special Master should have found as a conclusion of law that defendant did not become a trustee ex maleficio for interveners.

36. The Special Master erroneously found as a conclusion of law (Rep., page 53) that Section 16 of the Act to Regulate Commerce did not make interveners a general creditor of defendant and entitle interveners only to a judgment for damages to collect alleged overcharges.

The Special Master should have found as a conclusion of law that the Interstate Commerce Act prescribes the exclusive remedy for an overcharged shipper, and that that remedy is an action for damages in the event the railroad company fails to make reparation under order of the Commission.

37. The Special Master erroneously found as a conclusion of law (Rep., page 56) that the Act to Regulate Commerce was not exclusive as to the remedies of a shipper, but that a shipper could still pursue the common-law remedies.

The Special Master should have found that said Act to Regulate Commerce was exclusive on this question.

38. The Special Master erroneously found as a conclusion of law (Rep., page 57) that there is nothing in the Act of Regulate Commerce depriving shippers of the remedy pursued in this case.

The Special Master should have found as a conclusion of law that the Act to Regulate Commerce provides the only remedy to be pursued by overcharged shippers thereunder.

39. The Special Master erroneously found as a conclusion of law (Rep., page 59) that intervenor's claims are pre-

ferential under the rule that the test of the preferential equity of a claim is its consideration, and in finding that the facts in the case of *Love v. North American Company*, referred to in the Special Master's report, are identical with the facts in this case.

The Special Master should have found as a conclusion of law that the only relation existing between defendant and interveners was that of debtor and creditor, and that interveners were merely a general unsecured creditor without preference, and that interveners' claims are entitled to no priority in lien or superiority in equity over the mortgages of defendant, and that the facts in this case are wholly different from the facts in said *Love* case.

[fol. 195] 40. The Special Master erroneously found as a conclusion of law (Rep., P. 60) that it is presumed that interveners' money always remained in the treasury of the company, and that it operated to swell the funds in the treasury of the defendant, and thus made it possible, or, at least, aided in making it possible, for the bondholders to receive the interest on their bonds.

The Special Master should have found as a conclusion of law that upon the undisputed evidence in this case, that interveners' money did not remain in the treasury of the company, and did not constitute any portion of the fund turned over by defendant to said Receivers.

41. The Special Master erroneously found as a conclusion of law that the case of *C. & A. R. Co. vs. Trust Company*, 225 Fed. 940, has no application to this case.

The Special Master should have found as a conclusion of law that upon the authority of said *Trust Company* case the claims herein involved are not preferential.

42. The Special Master erroneously found as a conclusion of law (Rep., p. 62) that the six-months rule in respect to preferential claims obtaining in this circuit does not apply to this case, and that said rule was not applied in the *Love* case, and that the over charges involved in the *Love* case were not collected within the six-months period.

The Special Master should have found as a conclusion of law that the six-months rule should apply to interveners' claims; that that rule was observed and applied in the *Love*

case, and that the overcharges in the Love case were collected within said six-months period.

43. The Special Master erroneously found as a conclusion of law (Rep., p. 64) that defendant got the money of intervening interveners' claims in this case cannot be imputed to or tend to prejudice interveners' rights.

The Special Master should have found as a conclusion of law that interveners were negligent in the presentation of their claims, were guilty of inexcusable laches, and that, therefore, their claims should be rejected.

44. The Special Master erroneously found as a conclusion of law (Rep., p. 64) that defendant got money of interveners by violating its public duty, and that it took something that it had no right to do, and that neither defendant's creditors, its bondholders nor its stockholders can complain if it is compelled to make restitution.

The Special Master should have found as a conclusion of law that defendant did not collect interveners' money in violation of its public duty, and that it had the right to collect interveners' money for the services performed for interveners.

45. Special Master erroneously found as a conclusion of law (Rep., p. 65) that in the Love case the rates there involved were not collected in defiance of a state statute.

The Special Master should have found, as a conclusion of law, that an order of the Corporation Commission of Oklahoma prescribing rates was a legislative act, having the effect of a statute, and that the overcharges in that case were collected in defiance of a state statute.

46. The Special Master erroneously found as a conclusion of law (Rep., p. 66) that interveners' claims were collected by defendant in continuous violation of law.

The Special Master should have found, as a conclusion of law, that said rates were collected in conformity with law.

47. The Special Master erroneously found as a conclusion of law (Rep., p. 66) that although overcharges involved in the Love case were intrastate, while interveners' claims are for interstate overcharges, yet there is no distinction in principle respecting the nature of the overcharges and the relative rights of the parties overcharged.

The Special Master should have found as a conclusion of law that interveners' claims were directly affected by the Act to Regulate Commerce, and that the Oklahoma claims were not at all affected thereby, and that the Oklahoma claims were not at all affected thereby, and that in the Oklahoma case the interpretation of the laws of Oklahoma was involved, while in this case the interpretation of the Act to Regulate Commerce is involved.

48. The Special Master erroneously found as a conclusion of law (Rep., p. 68) that the attorneys' fees involved in the supplemental intervening petition, while not a proper legal charge against either the Receivers or St. Louis-San Francisco Railway Company, yet in equity should be treated as a part of the expense of the administration.

The Special Master should have found as a conclusion of law that said Receivers were not chargeable, either at law [fol. 197] or in equity, for any portion of said attorney's fees involved in the supplemental petition, as said fees were incurred subsequent to the surrender by said Receivers of the railroad and property of defendant to St. Louis-San Francisco Railway Company, and that they are not legally chargeable to St. Louis-San Francisco Railway Company, in this proceeding, if at all.

49. The Special Master erroneously found as a conclusion of law (Rep., p. 69) that the claims of interveners for attorneys' fees should be allowed as presented, and that an order should be made upon St. Louis-San Francisco Railway Company to pay the same.

The Special Master should have found as a conclusion of law that St. Louis-San Francisco Railway Company was and is under no obligation, either legal or equitable, to pay said attorneys' fees, or any part thereof.

50. The Special Master should have found as a conclusion of fact and of law that all the overcharges collected from interveners were paid out by defendant as current expenses of operation in the ordinary course of its business long prior to the appointment of Receivers in this cause, and to the failure of the Special Master to so find exceptor now excepts.

51. The Special Master should have found as a conclusion of law that under the contract between the Court and St. Louis-San Francisco Railway Company in this case, St. Louis-San Francisco Railway Company did not assume, nor has it otherwise assumed, payment of interveners' claims, or any part thereof, and to the failure of the Special Master to so find exceptor now excepts.

52. The Special Master should have found as a conclusion of law that he was bound by the orders, decrees and opinions of this Court, protecting St. Louis-San Francisco Railway Company from being subjected to liability in respect of the payment of interveners' claims, and to the failure of the Special Master to so find exceptor now excepts.

53. The Special Master should have found as a conclusion of law that interveners are not seeking by their pleadings herein to establish a trust fund in respect of their claims, and should not have enlarged the scope of the pleadings by permitting a recovery upon that theory, and to the failure of the Special Master to so find exceptor now excepts.

[fol.198] 54. The Special Master should have found as a conclusion of law that neither fraud, actual or constructive, was or is chargeable to defendant in respect of the collection of said alleged overcharges, and that by reason thereof no trust *ex maleficio* was created, and to the failure of the Special Master to so find exceptor now excepts.

55. The Special Master should have found as a conclusion of law that neither said alleged overcharges, nor the proceeds thereof, went into a specific fund or into a specific identified piece of property which came to the hands of the Receivers, and to the failure of the Special Master to so find exceptor now excepts.

56. The Special Master should have found as a conclusion of law that aside from the evidence in this case the legal presumption prevails that the moneys collected from interveners by defendant were paid out in the order in which they were paid in, and that none of said moneys passed into the hands of the Receivers upon their appointment, and to the failure of the Special Master to so find exceptor now excepts.

57. The Special Master should have found as a conclusion of law that there was no merit to interveners' claims, either those presented by the petition, or by the supplement thereto, and should have recommended that an order be entered herein dismissing said claims, and each of them, and to the failure of the Special Master to so find exceptor now excepts.

Wherefore, this exceptor prays that these, its exceptions to the report of the Special Master, be sustained, that said report be not confirmed, that interveners' said claims and each of them be disallowed, and that the intervening petition and supplement thereto be dismissed.

W. F. Evans, E. T. Miller, Solicitors for St. Louis  
and San Francisco Railroad Company, Exceptor.

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"The exceptions of the St. Louis-San Francisco Railway Company to said report of said special master are identical with the exceptions of the St. Louis & San Francisco [fol. 199] Railroad Company, to said report except for the change in name, and except that in exceptions numbered 48, 49, 50, 51 and 52, the name St. Louis-San Francisco Railway Company is substituted for the word 'Exceptor.' "

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#### IN UNITED STATES DISTRICT COURT

#### OPINION ON EXCEPTIONS TO REPORT OF SPECIAL MASTER— Filed August 23, 1922

On Exceptions to the Reports in Favor of the Intervenors  
of Honorable Thomas T. Fauntleroy, Special Master

W. F. Evans and E. T. Miller for the exceptors.  
Mr. S. H. Cowan, Mr. D. A. Murphy, Mr. John S. Leahy,  
and Mr. Walter H. Saunders for the intervenors.

SANBORN, Circuit Judge:

Between August 16, 1906 and November 17, 1908 the St. Louis and San Francisco Railroad Company collected of certain shippers of cattle, whose claims are held by the

interveners legally established freight rates, which on April 14, 1908 the Interstate Commerce Commission found to be unreasonable and unjust to the extent of about three cents per hundred pounds. That Commission then held reasonable rates to be those in force prior to 1903, and by its order made in July 1908 the earlier rates were put in force November 17, 1908. The Commission reserved all questions of reparation and, on January 12, 1914, after a new hearing on the merits, ordered the railroad company to pay in reparation of the damages for the collection of the excessive charges about \$30,000.00, interest, attorneys fees and costs. For convenience in the treatment of this controversy the amount will be hereafter stated as \$30,000.00, although that is not the exact amount.

In May 1913, on the bill of the North American Company, a general creditor of the railroad company, brought for itself and all others of its class, this court appointed receivers of all the property of the railroad company for the benefit of all its creditors as their interests might appear; the receivers took possession of all its property and proceeded to operate it and to distribute the proceeds thereof to its creditors. On April 3, 1914 the Rail Joint Company, a general creditor, filed a like bill, and that suit was consolidated with the suit of the North American Company under the title of North American Company, Com-[fol. ]200] plaintiff vs. St. Louis & San Francisco Railroad Company, defendant, in Equity, No. 4174, Consolidated Cause. On May 29, 1914, in this consolidated cause, this court rendered an interlocutory decree to the effect that all the property of the Railroad Company was thereby impounded, sequestered and set apart to pay the debts and obligations of the railroad company, that all parties who claimed any interest in or lien upon any of the property of the railroad company in the hands or control of the receivers should file verified statements of their claims with the Special Master on or before October 1, 1914, and that each of them who failed or refused so to do, should by such failure, be barred from receiving any share in the distribution of any of said funds of the property or of the proceeds thereof. Notice of this order and of the limitation of the time for the presentation of claims in order to permit the holders thereof to derive any benefit from or share in the

distribution of the property in the hands of the receivers or of its proceeds, was ordered to be and was duly given by a proper publication of the order itself. By subsequent orders this court extended the time for the presentation of such claims, until the necessity to know definitely the number and amount thereof as a basis for the bids of prospective purchasers at the approaching foreclosure sale who were to assume the payment of such claims, and as a basis for correct estimates of the amounts which various classes of creditors might expect to receive from the disposition of the property in the hands of the receivers, became imperative, and that time finally expired on February 1, 1916.

On May 22, 1914 the Trustees, under the general lien mortgage of the railroad company dated August 27, 1907, filed their bill for its foreclosure, on July 9, 1914 the trustee of the railroad company's refunding mortgage dated June 20, 1901 filed his bill for the foreclosure of that mortgage. The court appointed the same receivers that had been appointed in the previous suits, who immediately took possession of and impounded all the mortgaged property for the benefit of the mortgage bond holders, and by prior orders and by an order of January 21, 1916 all the suits that have been mentioned were consolidated into the single suit entitled "North America Co., complainant vs. St. Louis & San Francisco Railroad Company, defendant, No. 4174, Consolidated Cause, final," and the final decree of foreclosure and sale was rendered in this consolidated cause and in each of its constituent causes. Substantially all the property of the railroad company was subject to the mortgage [fol. 201] gages which were thereby foreclosed.

On March 31, 1916 the final decree of foreclosure and sale of all the property of the railroad company was rendered, on July 16, 1916 all this property was sold under that decree to purchasers for the St. Louis-San Francisco Railway Company, which subsequently assumed their obligations, received the property, and will hereafter be deemed and called the purchaser. On August 29, 1916, this court, after an extended hearing upon notice to all parties in interest, confirmed this sale.

The interveners had not filed any claim to any interest in or lien upon the property or the proceeds of the property of the railroad company which had come to the hands

of the receivers, with the Master or with the court prior to the expiration of the time fixed for the filing of such claims on February 1, 1916, nor did they ever file any verified claims of that nature prior to the time when they filed their intervening petition herein on December 2, 1920. But at the hearing on the application for the confirmation of the sale on August 29, 1916 they gave notice to the parties to the consolidated cause that they had claims against the railroad company for illegal freight exactions that had been reduced to the judgment in the United States District Court for the Western District of Missouri of August 16, 1916, that an appeal was being taken from that judgment by the railroad company and other carriers, and that the interveners would claim that their claims evidenced by that judgment were prior in lien and superior in equity to the liens and claims of every other party whosoever upon and to the property of the railroad company in the hands of the receivers. No other or further suggestion, presentation, or action was made or taken by the interveners to present or prove their claims on or to the property sold and delivered to the purchaser, the railway company under the foreclosure decree or against the railway company until December 2, 1920 when they applied to this court for leave to file their intervening petitions in this consolidated cause. The railroad company and the railway company opposed that application.

On February 12, 1921 this court granted the application. As was stated in its memorandum, it was not then persuaded that the interveners were not entitled to present their pleadings and evidence, and it was of the opinion that the claims of the interveners would more speedily reach a [fol. 202] final and satisfactory adjudication by permitting them to plead and prove them than by refusing so to do. The court intended, by its order, permitting the filing of the intervening petitions, as the Special Master rightly ruled, thereby to permit pleadings and proofs on the merits on all the issues raised by the interveners' petitions. It did not, however, intend by that order to determine and did not determine what the Master's or the court's final adjudication should be or ought to be on any of the issues presented after the answers of the railroad company and

the railway company and the evidence of all the parties should be before them.

In the year 1903 the railroad company advanced its freight rates on shipments of cattle from the southwest to Kansas City, Chicago and other markets about three cents per hundred pounds, filed and published the schedules of the advanced rates, and otherwise complied with the requirements of the Act to regulate commerce so that these advanced rates became in 1903, and until November 17, 1908, when, by the order of the Commission based on its finding and opinion of April 14, 1908, (*Cattle Raiser's Association vs. Missouri, Kansas & Texas Railway*, 13 I. C. C. 418, 435) the reduced rates in existence prior to 1903 were again put in force, continued to be the legal established rates, and the only rates which the railroad company could collect or receive without violating the Act and subjecting itself to the heavy penalties prescribed for such violations. The Act to Regulate Commerce, Sections 2, 6, 10; *United States Comp. Stat.*, Sections 8564, 8569, and 8574; *Texas & Pacific Ry. Co. vs. Abilene Cotton Oil Co.*, 104 U. S. 436, 437. "The tariff, so long as it was of force, was, in this respect, to be treated as though it had been a statute, binding as such upon railroad and shipper alike. If, as a fact, the rates were unreasonable the shipper was nevertheless bound to pay and the carrier to retain what had been paid, leaving however, to the former the right to apply to the Commission for reparation." *Penn. R. R. Co. vs. International Coal Co.* 230 U. S. 184, 197; *Robinson vs. B. & O. Ry. Co.*, 222 U. S. 506, 509.

The railroad company and the other carriers engaged in transporting cattle from the southwest strenuously contested the claims of the shippers that the advanced rates were unreasonable and that the shippers were entitled to the damages as reparation for the loss sustained by their collection and, after the receivers were appointed, they, under name of the railroad company, continued this contest until it was finally decided by the Supreme Court of the [fol. 203] United States. On February 10, 1904 the Cattle Raisers' Association of Texas, for the benefit of the interveners and other shippers, filed with the Interstate Commerce Commission a complaint that these advanced rates were unreasonable and unjust. The carriers denied that

they were so, and on August 16, 1905 the Commission filed its report and opinion to the effect that the rates were unjust and unreasonable to the extent of the advances made in 1903. *Cattle Raisers' Association vs. Missouri, Kansas & Texas Railway*, 11 I. C. C. 296, 352, but it reserved all questions of reparation and it made no order on this report and finding so that the advanced rates still remained the legal and only freight rates which the railroad company could collect without a violation of the Act to Regulate Commerce. A report or an opinion of the Interstate Commerce Commission without an order to change established rates neither authorizes nor permits a departure therefrom.

On August 29, 1906 the Cattle Raisers Association applied to the Commission to reopen this case, the Commission granted its application, set the case for a second hearing and tried it again. This trial resulted in the report and opinion of April 14, 1908 and the order of July 1908 which put the rates prior to the advances of 1903 in force on November 17, 1908, but the Commission reserved questions of reparations to be dealt with as specific claims were presented. The intervenors presented their claims for reparation to the Commission, and on January 12, 1914 it ordered the railroad company to pay to the intervenors as damages resulting from the collection of the advanced rates the \$30,000.00 it had obtained in excess of the rates prior to the advances of 1903 between August 16, 1906 and November 17, 1908. On December 29, 1914 the intervenors brought an action at law in the United States District Court for the Western District of Missouri upon the Commission's award of damages and orders of reparation, and on August 16, 1916 they recovered judgments against the railroad company for the \$30,000, interest and attorneys' fees. One of these judgments was subsequently reversed by the Court of Appeals but was finally affirmed by the Supreme Court on May 27, 1920, and by stipulation of the parties the other judgment thereafter stood firm.

In May 1913 this court appointed receivers of and took into its exclusive possession and control, all the property of the railroad company for the purpose of administering, selling and distributing it and its proceeds to the creditors [fol. 204] and stockholders of the company in accordance with the respective ranks and equities of their claims upon

and to it. It is indispensable to the just administration and distribution of such property that the court shall be advised and know, as far as possible, before it proceeds to adjudicate the equities of the parties interested in it or to sell it or distribute its proceeds, the claimants who seek to participate in it and the nature and extent of their claims. Such knowledge is necessary to enable the court to reach a basis for action in determining the equities of claims, the propriety of sales, the probable value of various claims, and the propriety of settlements and compromises thereof. In order to secure this information it has long been the lawful and approved practice of courts of equity and probate engaged in the administration and distribution of such property to render interlocutory decrees or orders to the effect that all who desire or intend to seek to participate in such property or the benefits therefrom, shall file their verified statements of the amounts and natures of their claims on, in, or to the property or its proceeds, by certain times, and that all who fail to file such claims before the expiration of such times, shall be thereby barred and foreclosed from any lien upon or interest in the property in the hands of the court or its proceeds. Such orders are primarily and chiefly for the assistance and benefit of the court in the discharge of its duties of administration and distribution, although they are also beneficial to claimants and especially to those who desire to bid for the purchase of the property. And, as the latter are frequently required to pay some or all of such claims as a part of the purchase price of the property, they are warranted in relying upon the statements thus filed and the interlocutory and final decrees of the courts barring those claimants from participation who do not present such verified statements within the times fixed. Such an interlocutory decree was rendered in this suit, which, by its express terms, foreclosed and barred the intervenors in this case from all liens upon and interests in the property of the railroad company or its proceeds because they had failed to file any verified statements of claims thereon or thereto on or before February 1, 1916. Such decrees and orders are lawful, customary and effective. *Farmers Loan & Trust Company vs. Chicago & N. P. R. Co.*, 118 Fed. 204, 205; *Western New York & P. R. Co. vs. Penn Refining Company*, 137 Fed. 343, 367.

The actions at law which the intervenors were prosecuting against the railroad company in the United States District Court at Kansas City and in the Supreme Court [fol. 205] gave no notice to this court and it had no knowledge whether or not the intervenors claimed any lien upon or interest in the property of that company in its possession, except that information which it derived from the fact that they had not filed such verified claims, although their claims against the railroad company had been established as to the liability of the railroad company and as to their amounts by the reparation orders of the Interstate Commerce Commission of January 12, 1914 and the intervenors could have filed their verified claims for participation in the benefits of the property in the hands of this court at any time after January 12, 1914 and before February 1, 1916. Not only this, but this court had plenary jurisdiction, upon proper application, to have heard and decided their claims for participation in the benefits of this property whether those claims were founded on causes of action at law or in equity.

They filed no claims, and on March 31, 1914 the final decree herein expressly adjudged the claims of all who had neither interviewed nor filed verified claims, foreclosed and barred of participation in the benefits of the property or its proceeds as against all parties claiming under that decree. On July 16, 1916, in reliance upon these decrees, the railway company purchased all the property at the foreclosure sale. Then and thereby the court contracted to convey that property to the purchaser for the purchase price it bid for that property, free from the claims of the intervenors, as it had decreed that it was, and the purchaser contracted to pay the purchase price it bid therefor. The court and the purchaser performed this contract. On August 29, 1916 the court confirmed the sale. A few days later it caused the property to be conveyed to the purchaser. The purchaser paid the price it had bid for it, issued its stock and bonds to the amount of hundreds of thousands of dollars, and immediately placed them upon the market so that many of them must have gone into the hands of innocent purchasers long before the intervenors on December 2, 1920 applied for leave to file their intervening petitions. What then do the inter-

venors now claim and seek? After failing to file their verified claims as ordered by the interlocutory decree from May 29, 1914 until after the time so to do expired on February 1, 1916, after neglecting to make any motion, file any petition or application to this court, or to take any other effectual step to question or avoid the decrees of the court, or the sale and disposition of the property under them, or the effect of their long delay and inaction until they applied to file their intervening petitions, more than six years [fol. 206] and eight months after the liability of the railroad company to them and the amounts of their claims had been fixed and directed by the reparation orders of the Commission to be paid by the railroad company, and more than four years after the contract of the court to sell the property was made on July 16, 1916, the sale confirmed, the property delivered to the purchaser, the property paid for by the purchaser, the stocks and bonds of the purchaser issued and many of them doubtless sold to innocent purchasers, the intervenors' appeal to this court of equity to disregard its contract of sale, its interlocutory and final decrees and compel the purchaser to pay for the property it bought in reliance upon the silence and inaction of the intervenors and the adjudications of those decrees \$30,000, interest thereon for many years and attorneys' fees in addition to the amount for which the court by its decrees and contract of sale agreed to sell and convey and did sell and convey this property to the St. Louis-San Francisco Railway Company. But "Where a court of equity finds that the position of the parties has so changed that equitable relief cannot be afforded without doing injustice or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable power in order to save one from the consequences of his own neglect." *Penn Mutual Life Insurance Company vs. Austin*, 168 U. S. 698, 699. Since the intervenors neglected to file their verified claims and those claims became barred by the interlocutory decree and the final decree, the rights of the purchaser under its contract of purchase and deed and the rights of each of its stockholders and creditors have intervened in just reliance upon that neglect and the decrees of the court and the granting of the relief which the intervenors now see will impair those rights to the amount

in the aggregate of this \$30,000.00, interest and attorneys' fees.

The statute of limitations of the State of Missouri, applicable to the cause of action at law analogous to that which the intervenors here present is five years from the date of its accrual. 1 Rev. Statutes of Missouri, 1909, Sections 1887, 1889. The limitation on the analogous action at law prescribed by the Act to regulate commerce is two years, 8 U. S. Comp. Stat., Section 8584. The cause of action which the intervenors are now most seriously urging is based upon the propositions that the money collected from the excessive rates prior to November 17, 1908 were unlawfully exacted from them by the railroad company, that the railroad company consequently became a trustee ex maleficio of those moneys, that the railroad company until [fol. 207] the receivers were appointed in May 1913 and the receivers thereafter always had sufficient moneys to pay back the moneys the railroad company thus exacted, and that the purchaser at the foreclosure sale took the property he bought subject to the trust ex maleficio subject to which the railroad company took the moneys collected in 1908. If this theory is maintainable the cause of action based upon it accrued when the railroad company collected the moneys prior to November 17, 1908. 39 Cyc. 176; *Wheeler vs. Reynolds*, 66 N. Y. 227, 235; *Grove vs. Kase*, 45 Atl. (Pa.) 1054. And neither that theory nor any claim or suggestion of it, so far as the court can discover, was ever made by the intervenors in or out of the proceedings in this court, or in any other court, until December 2, 1920 when the intervening petitions were presented—more than twelve years after the cause of action to enforce this alleged trust accrued—more than six years and nine months after the Commission's orders of reparation had liquidated and fixed the amounts of the intervenors' claims, the liability of the railroad company for them and had directed that company to pay them.

In the application of the doctrine of laches the settled rule is that courts of equity ordinarily act or refuse to act in analogy to the statute of limitations relating to actions at law of like character. Generally a suit or an application for relief in a court of equity will not be stayed for laches before the expiration of the time, and will be stayed after the

expiration of the time fixed by the analogous statute of limitations at law. When such a suit or application is brought within the time of the analogous statute of limitations the burden is upon the defendant to show that it would be inequitable to permit it to be maintained on account of unusual circumstances, such as innocent purchasers to be affected and radical changes in the relations and interests of the parties meanwhile. On the other hand if such a suit or application is brought after the time fixed by the analogous statute of limitations at law the burden is upon the complainant or petitioner to plead and prove unusual conditions or extraordinary circumstances which make it inequitable to apply the settled rule and stay the proceeding notwithstanding the fact that the analogous limitation expired before this suit or application was brought. This case falls in the latter class. The times of the statutory limitations of the analogous actions at law had all expired long before the petitions presented their applications for intervention and their petitions ought to be dismissed under the settled rule unless by pleading and proof they have established preponderant equitable reasons why they should [fol. 208] be exempted from its operation. *Kelly vs. Boettcher*, 85 Fed. 55, 62; *Idé vs. Trolicht Dunker & Renard Carpet Co.*, 115 Fed. 137, 149.

They urge that from 1904 until April 1914 they were prosecuting their claims before the Interstate Commerce Commission and thereafter before the United States District Court at Kansas City and the Supreme Court until December 1920, and that the railroad company and the receivers were defending against these claims. But all those proceedings were against the railroad company for personal judgment against it for damages. The Commission and the courts in which those proceedings were taken had no jurisdiction of the administration and distribution of the property of the railroad company of which this court had exclusive control after May 1913. This court also had jurisdiction on proper applications by the intervenors, certainly after the orders of reparation of April 1914 were made fixing the amounts of their claims and the liability of the railroad company and perhaps before that time, to receive, hear and allow or disallow their claims upon or to the property or the proceeds of it in its possession

whether those claims were based on causes of action at law or in equity.

They say that the delay of Boyd in Northern Pacific Railway vs. Boyd, 228 U. S. 480, 507, was much longer than their delay in the case at bar, but in that case it was indispensable to the maintenance of Boyd's suit in equity that he should first secure a judgment in his action at law. Here no judgment was necessary. All that the interlocutory decree required of the intervenors was to file verified statements of their claims, not to prove them, before February 1, 1916. The pending proceedings at law in other courts against the railroad company presented neither impediment to their compliance with that decree nor excuse for their failure so to do.

They insist and it is conceded that they had no actual notice or knowledge of the interlocutory decree and its limitation of the time to file claims until August 29, 1916—the day of the confirmation of the sale. But in cases of the administration and distribution of property in the exclusive possession and control of courts of equity and probate courts, reasonable publication of their orders limiting the times to file claims and barring the claims of those who do not file within the times fixed to participate in the benefits of such property or its proceeds, constitutes regular and binding notice thereof, and further notice or knowledge is [fol. 209] is not dispensable to bar the claims: Again "If a person be ignorant of his interest in a certain transaction, no neglect is imputable to him for failing to inform himself of his rights, but if he is aware of his interest and knows that proceedings are pending, the result of which may be prejudicial to such interests, he is bound to look into such proceedings so far as to see that no action is taken to his detriment." *Foster vs. Mansfield Coldwater & Lake Mich. R. R. Co.* 146 U. S. 88, 100. The counsel for intervenors knew soon after May 1913 that all the property of the railroad company had been delivered to the possession and control of this court for administration and distribution and that the railroad company had none of it. They knew that in cases of this character the common, lawful and effective practice of courts of equity was to make and publish by advertisement in the newspapers decrees or orders

limiting the times to present claims to such courts to participate in the benefits of the administration and distribution of the property and by such orders or decrees to bar from participation therein the claims of all those who failed to file statements of them within the time fixed. By an examination of the record of this court at any time between May 29, 1914 and February 1, 1916 the intervenors or their counsel could have learned of the interlocutory decree and its effect. Notice of facts and circumstances which would put a man of ordinary prudence and intelligence on inquiry is, in law and in equity, notice of all the facts a reasonably intelligent inquiry would disclose. *Wood vs. Carpenter*, 101 U. S. 135, 137, 141. The intervenors' notice of the exclusive possession and control by this court by its receivers of all the property of their debtor for the purpose of administration and distribution was sufficient to put a claimant of ordinary prudence on inquiry as to the course requisite for him to pursue to share therein, and such an inquiry would have disclosed, as it did disclose to hundreds of other claimants, the limitation and bar of the interlocutory decree. If the intervenors failed to exercise like prudence and diligence that fact does not appeal with sufficient force to induce a court of equity to relieve them of the injurious effect of that neglect by imposing it upon the diligent claimants who complied with the decree of the court and their successors in interest.

Intervenors invoke the fact that on August 29, 1916, the day of the confirmation of the sale, after the interlocutory decree, after the final decree and after the contract of sale [fol. 210] had been made, they gave notice to the parties to this suit and to the purchaser that they claimed and intended to enforce their claim that they had liens upon the property sold to the purchaser prior in right and superior in equity to those of any and all parties whomsoever. It may be that if they had then filed a dependent bill or, as was done in the *Boyd* case, an original bill, *Northern Pacific Ry. vs. Boyd*, 228 U. S. 482, 492, or if they had then procured an insertion in the final decree of such an exemption of themselves and their claims from the estoppels thereof as the *Guardian Trust Company* secured in *Central Improvement Co. vs. Cambria Steel Company*, 201 Fed. 811, 815; *Kansas City Southern Ry. vs. Guardian Trust Com-*

pany 240 U. S. 166, 174 they might possibly have escaped those estoppels and the fatal consequences of their laches. But they made no motion or application and took no action to secure any relief from those decrees or to stay the continuance of their negligence until December 2, 1920—more than four years thereafter. If the owner of an over-due promissory note notifies its maker that he has a right of action and that he will enforce that right against that maker to the payment by him of that note such a notice will not stay the running of the statutes of limitations against such an action to secure such a result. An actual commencement of the action is indispensable and the intervenors' notice of August 29, 1916 that they claimed and would enforce rights to liens upon or interests in the property prior in right and superior in equity to those of all others whomsoever was equally futile to destroy, stay, or exclude the estoppel effected by their laches. "The mere assertion of a claim unaccompanied with any act to give effect to the asserted right could not avail to keep alive a right which would otherwise be precluded because of laches." *Mackall vs. Casilear*, 137 U. S. 556, 567; *Penn Mutual Life Ins. Co. vs. Austin*, 168 U. S. 687, 697.

They say that a court of equity has the power to permit the filing of claims in a receivership suit after the time fixed by the interlocutory decree or order has expired, and in *Park vs. New York L. E. & W. Ry. Co.*, 140 Fed. 799, and *In Re Ziegler*, 190 N. Y. Supplement, 683, in which sufficient parts of trust funds remained in the hands of the courts to pay certain cestuis que trust the shares to which they were entitled and no injury would result from such payments to others, the courts, upon good excuses, one of which was infancy, the courts allowed them to come in after the times and obtain their shares. But this is no such case. There are and were no trust funds from this property in [fol. 211] the hands of this court to pay the intervenors' claims on December 2, 1920. The funds secured from the sale had been distributed, the property they seek to charge had been sold and conveyed to the purchaser by the court, the purchaser had paid for it. Its stocks and bonds had gone upon the market under two decrees which barred the intervenors' claims more than four years before the inter-

venors applied for leave to assail them, and they present no reasonable excuse for these delays.

It is claimed and conceded that the final decree in Article 10, Paragraph b required the Receiver in not more than twenty nor less than ten days prior to the day of sale, July 16, 1916, to file a statement of all unpaid indebtedness and liabilities of the railroad company incurred prior to the appointment of the receivers "and which, so far as they are informed, are claimed to be prior in lien or superior in equity to the refunding mortgage" and the receivers did not include the claims of the intervenors in the list they filed. But prior to that time the intervenors had failed to file their claims by February 1, 1916 and those claims had been adjudged by the interlocutory decree and by the final decree of March 31, 1916 to be finally barred so that it was not the duty of the receivers to list them, and their failure so to do was the natural and direct effect of the negligence of the intervenors.

Another alleged excuse for their laches is that the general creditors of the railroad company received offers of settlement pursuant to the terms of the final decree before the confirmation of the sale, and no such offers were made to the intervenors. But if they had filed their verified list of their claims pursuant to the terms of the interlocutory decree they would have received such offers. Their failure to receive them was the natural and direct effect of their failure to comply with the terms of the interlocutory decree and was but another evidence of their lack of diligence.

Counsel for the intervenors claim and the special master found that the final decree contemplated that such claims as theirs might be filed and presented to this court after the entry of the decree. The provisions of the decree which condition the correctness of this contention are Article ninth b. that the purchaser at the sale shall pay "any unpaid claims of creditors of the defendant railroad company which have been or shall be admitted by the parties in interest or adjudged by this court to be prior in lien or superior in equity to the refunding mortgage or the general [fol. 212] lien mortgage," Article Tenth, That the Receivers shall, before the sale, file a statement of (b.) "All paid claims of creditors of the defendant railroad com-

pany that they are informed are claimed to be prior in lien or superior in equity to the refunding mortgage \* \* \*.

(e.) All claims and demands against the defendant railroad company which have been filed in this court pursuant to the orders heretofore entered herein save such as shall have been paid in [fill] \* \* \*. Notice having been given for the presentation in this cause of claims and demands against the defendant railroad company of every character and description, whatsoever, and the time for the presentation of said claims having expired, (no claim or demand which has not been presented in this cause in accordance with the orders heretofore made requiring presentation thereof other than (1) \* \* \*, (2) Any claim that may arise after the entry of this decree, shall be enforced against the receivers or against the property sold or any part or portion thereof or against any purchaser of the same or any part thereof, his successors or assigns." The view of the Special Master was that the word arise in the exception "other than any claim that may arise after the entry of this decree" did not mean accrue and that while the claims of the intervenors did not accrue after the entry of the decree, they arose thereafter, and hence were excepted from what seems to the court to be the plain and comprehensive bar of all claims not presented as required by the interlocutory decree, contained in that decree and in the final decree. But after thoughtful consideration the court is unable to adopt this view or to resist the conclusion that the meaning of the word arise in the connection in which it is here used was identical with the meaning of the word accrue, that none of the claims of the intervenors either arose or accrued after the entry of the decree, and that they all fall under the ban of both decrees.

Another contention of the intervenors which the special master adopted was that the foreclosure decree, the sale thereunder, and the confirmation were, between the intervenors on the one hand the purchaser and those claiming under it on the other, "without form and void" and that the intervenors could in this proceeding avoid or disregard them and subject the property sold to the purchaser to the payment of their claims under the rule in *Northern Pacific Railway Company vs. Boyd*, 228 U. S. 483. But the reorgan-

ized corporation which purchased the property in this case, its rights to the property, the final decree itself, the sale and confirmation thereof thereunder, and the estoppels effected [fol. 213] thereby, are free from the vice that rendered the decree and sale in Boyd's case voidable or void as to him. That vice was that the real purchaser at the sale was the reorganized corporation in which the stockholders of the mortgagor were given beneficial interests for their stock while the unsecured creditors were excluded from any such benefits. In the course of the foreclosure proceedings in this case, which resulted in vesting the title to the property in the purchaser at the foreclosure sale a fair and reasonable offer of cash or a beneficial interest in the purchaser corporation, was offered to every creditor who filed the verified statement of his claim as required by the interlocutory decree, and more than 90% of the unsecured creditors accepted that offer. The validity and conclusiveness of that final decree against those who refused to accept the offer or disregarded it has been repeatedly adjudged by this court. Its opinion in the case of McElvain, who filed his verified claim and then failed to accept the offer, *St. Louis-San Francisco Ry. Co. vs. McElvain*, 253 Fed. 123, 129, 130, 133, 135, discloses the reasons for those adjudications. If the interveners had filed verified lists of their claims as directed by the interlocutory decree they would have undoubtedly have received fair offers of beneficial interests in the purchasing corporation or of cash. They failed to file such lists as required by the decree of the court and are consequently in a much less favorable position to assail, avoid or disregard the estoppel of the decree and of the sale that was McElvain, and for the reasons stated in this case they are, in the opinion of the court, subject to those estoppels.

There is another reason, not less persuasive, why they are stopped from disregarding, avoiding or assailing the validity of the decrees or the sale in this case. They are here on an order of this court made at their request, which permits them to intervene in this case, more than four years after these decrees, and that sale were made. They do not come here on an original bill as did Boyd or under an express exemption of themselves and their claims from the estoppels of the decree inserted in the body thereof before

it was made as did the Guaranty Trust Company. They voluntarily intervened in this case more than four years after the decree and the sale, and after during those four years, many innocent purchasers must have become financially interested in the stock and bonds of the purchaser, and all the relations of the interested parties have radically changed in reliance upon the validity of the decree and the sale. It is the established and general rule that those who [fol. 214] intervene in a suit in equity on their own applications enter subject to and are thenceforth bound and estoppel by all the previous orders, decrees and acts of the court in the suit to the same extent as they would have been if they had been parties to the suit when those orders, decrees and acts were respectively made, and, under this rule the interveners are conclusively estopped from avoiding, disregarding or assailing the decrees, the sale, the estoppels thereof, or the title to the property in the purchaser. *Swift & Co. vs. Black Panther Oil Gas Co.*, 224 Fed. 20, 29.

All the other findings and conclusions of the master and all the contentions of the intervenors concerning this question of laches and estoppel have been carefully considered, but they have only confirmed the conclusion which those which have been discussed and the facts which have been recited, have converged with the compelling power to force upon the court.

Under the general rule that the doctrine of laches is applied in accordance with the statutory limitation of the analogous action at law the interveners were estopped by their laches to maintain this intervention. The liability of the railroad Company for and the amounts of their claims were adjudicated and fixed by the orders of reparation of the Interstate Commerce Commission in April, 1914. The interveners could have presented their claims at any time from April, 1914, until February 1, 1916, to this court which had plenary and exclusive jurisdiction to hear and adjudge their claims of rights to participate in the benefits of the property in its possession. They were ordered and decreed by the interlocutory decree to present those claims to the court by February 1, 1916, or to be barred from enforcing them against that property or its proceeds. They were estopped from enforcing those claims by means of

this intervention because they failed to obey the decree of the court to file with it verified statements of their claims by February 1, 1916, because they never filed with or presented them to this court until December 2, 1920, when they filed this petition to intervene—more than six years after every impediment to their presentation of them to this court had been removed by the reparation orders of 1914, and because, meanwhile, in reliance upon their failure to file their claim to participate in the benefits of the property, this court had rendered its final decree barring their claims, had made the foreclosure sale, had contracted to sell and [fol. 215] convey the property free from their claims, and the purchaser had contracted to buy it free from their claims, the sale had been confirmed, the court had caused the property to be conveyed to the purchaser, that purchaser had paid for it, had issued its stock and bonds, they had put upon the market, all relations and rights of those interested in the property had radically changed and the proceeds of the sale of the property had been distributed to those entitled to it, and finally, because no justification or reasonable excuse for this misleading silence and inaction has been established.

The result of the whole matter is that the court is unable to resist the conclusion that the equity of the purchaser, the St. Louis-San Francisco Railway Company, is superior to the equities of the interveners here, that it would be contrary to the familiar and established rules of equity jurisprudence and would be inequitable after the negligence and long delays of the interveners to permit them to maintain their claims and obtain decrees imposing the losses they may suffer from their own neglect and inaction upon the purchaser and the holders of its stock and bonds who have not failed in diligence in addition to the purchase price for which the court contracted to sell and did sell and convey the property to the St. Louis-San Francisco Railway Company. For these reasons the intervening petition must be dismissed.

The Court has not failed to note nor to consider the facts that in the actions at law against the railroad company for damages resulting from the collection of excessive charges brought in the United States District Court at Kansas City that court allowed to the interveners by its judgments

against the railroad company on August 16, 1916, certain amounts as attorneys' fees for the interveners, that they pleaded these facts in their intervening petitions of December 2, 1920, and asked to recover these attorney's fees of the purchaser, the St. Louis-San Francisco Railway Company, on the ground that the receivers in this suit, who were not parties to those actions at law, through their attorneys defended them but the attorneys' fees were allowed by those judgments and arose before the confirmation of the foreclosure sale, more than four years before the interveners filed in this court any petitions or any claim for them. The equities of those claims are inferior to those of the rights of the railway company under the foreclosure decree and sale for the same reasons that the claims that have already been considered are and for the further reason [fol. 216] that the fact that the receivers deemed it their duty to and did defend those actions at law against the railroad company to which they were not parties did not impose upon them in these cases, much less upon the purchaser under the foreclosure sale, any liability at law or in equity to pay the attorneys' fees which the court of Kansas City adjudged a liability of the railroad company only. For like reasons the claims of the interveners by supplemental petitions filed after December 2, 1920, for decrees against the railroad company for the payment by it of attorneys' fees allowed to the interveners against the railroad company by the court at Kansas City subsequent to December, 1920, cannot be sustained and the supplemental petitions in intervention as well as the original petitions must be dismissed.

Nor has the court failed to consider whether or not the interveners would be entitled to a recovery from the railway company if they had not been heard from any such relief by their laches.

They insist that they are entitled to decree against the railway company because (1) The Railway Company collected and received the excessive charges unlawfully and thereby became a trustee ex maleficio thereof for the benefit of the interveners, that they have traced the trust moneys thus collected from the railroad company to the receivers, and from the receivers into the property bought by the railway company at the foreclosure sale, and (2), because their

claims against the property of the railroad company on account of these collections were prior in right and superior in equity to the claims on or to that property of all prior mortgages and lienholders and of all other parties whomsoever under the rule which permits a court of equity which has seized by its receivers and impounded the property and income of a railroad company for the benefit of mortgage bondholders and other like lien holders to prefer to their claims in equity and in payment that small class of unpaid claims which arise from the current expenses of the ordinary operation of the railroad for wages, supplies, materials and such necessities of operation during six months immediately before the income is thus impounded.

But if the railroad company ever became a trustee ex maleficio of the moneys it collected from these excessive charges it became such day by day as it collected them between January 29, 1906, and November 17, 1908. The [fol. 217] interveners' causes of action to enforce that trust accrued prior to the latter date, and, if there was such a trust every impediment to the prosecution of a suit or proceeding to enforce it, either in this suit or elsewhere, if there ever was any impediment, was removed on January 12, 1914, when the Commission made its orders of reparation. The interveners never commenced any proceeding to enforce such a trust, never pressed or suggested such a trust until they presented their intervening petitions herein on December 2, 1920, and, as has already been held, they were estopped by this delay from enforcing it against the railway company.

During the time when the collections of these excessive charges were made these charges were parts of the freight rates duly established, scheduled, filed, published, and in force in strict compliance with the requirements of the Act to Regulate Commerce. They were during this time the legal established rates and the only rates which the railroad company could collect without a violation of the Act to Regulate Commerce. The issue whether or not they were unreasonable or unjust was pending and in process of hearing and decision, but not yet decided before the Interstate Commerce Commission. Section 1 of the Act to Regulate Commerce, U. S. Comp. Stats. Section 8563 prohibited any unjust and unreasonable charge. Section 6 (7) U. S. Com-

piled Stat. Section 8569 prohibited the railroad company from collecting or receiving a greater or less or different compensation for the transportation here involved than that specified in the established schedules, and Section 10 of the Act, U. S. Comp. Stat., Section 8574 imposes a penalty for a violation of this provision, and the Supreme Court held that "If, as a fact, the rates were unreasonable, the shipper was nevertheless bound to pay and the carrier to retain what had been paid, leaving, however, to the former the right to apply to the Commission for reparation. *Penn R. R. Co. vs. International Coal Company*, 230 U. S. 184, 197; *Texas & Pacific Railroad Company vs. Abilene Cotton Oil Co.*, 204 U. S. 426, 437. The railroad company collected these legally established rates. It had the decision and direction of the highest judicial tribunal in the land for its justification, and this court is of the opinion that its collection of these rates was not unlawful. The prohibition of Section 1 and that of Section 6 must be read and interpreted together, and the correct construction of them is that the specific prohibition of Section 6 constitutes an exception from the general prohibition of Section 1. A construction that each prohibition is of equal force and equally [fol. 218] applicable in such a case as that in hand would impose upon the carrier the penalty of a violation of Section 1 if it complied with Section 6, and the penalty of violation of Section 6 if it complied with Section 1, and an interpretation which leads to such an absurdity ought to be rejected. *Potter's Dwarrris on Statute & Constitution*, 128 Rule 15.

The Act of Congress imposed upon the railroad company the duty to establish freight rates and publish schedules of them as prescribed by that Act and made the rates so established by it the legal rates. The railroad company so established the rates. It was its duty to its stockholders and creditors to establish compensatory rates and to the shippers to establish reasonable rates. The legal presumption is that it intended and endeavored to establish rates that were both compensatory and reasonable. A trustee ex maleficis of moneys or property is one who has acquired it by a violation of some provision of the moral or legal code. Fraud, misrepresentation, deceit, violation of some law or

some other like act or representation, something that taints the conscience, is indispensable to the raising of such a trust or the making of one such a trustee. Mr. Pomeroy says "An exhaustive analysis would show, I think, that all instances of constructive trust properly so called may be referred to what equity denominates fraud, either actual or constructive, as an essential element, and as their final source." Pomeroy's Equity Jurisprudence, Section 1044. Because the collection of these excessive charges was not unlawful, because the railroad company by their collection was guilty of no fraud, misrepresentation, deceit or violation of the moral or legal code it did not take these collections as a trustee *ex maleficio*, no trust arose, and no cause of action to enforce such a trust ever accrued here.

Moreover, this alleged cause of action to charge the railroad company as a trustee *ex maleficio* of the moneys collected by it from the excessive charges is not maintainable (1) because it is not consistent with and is abrogated by the Act to Regulate Commerce and by the exclusive remedies for such collections by reparation prescribed by that Act, and (2) because the interveners are estopped from maintaining it by their prosecution of their inconsistent remedy by reparation under the Act of Congress from 1906 until December 1920, Act to Regulate Commerce, Sections 8, 16; U. S. Compiled Statutes, Sections 8572, 8574. The theory and indispensable basis of the alleged trust is that the [fol. 219] ownership of the moneys collected by the Company from the excessive charges never passed from the interveners to the collector but that the latter took and its successors in interest still hold those moneys in trust for the owners, the interveners. The theory and the indispensable basis for the remedy by reparation provided by the Act to Regulate Commerce is that the interveners lost the title and ownership of the moneys collected by the company, were damaged by that loss, and that those damages are to be paid by the reparation provided by the Act to Regulate Commerce, Sections 8 and 16; Sections 8572, 8574 *Supra*. In *Texas & Pacific Railway Company vs. Abilene Cotton Oil Co.* 204 U. S. 426, the Supreme Court in effect held that the remedy by reparation prescribed by the Act to Regulate Commerce for the collection of excessive charges,

were, as in this case, a decision of the Interstate Commerce Commission was essential to determine the unreasonableness and the extent of the unreasonableness of the rates, was exclusive and that no action at common law could be maintained on account thereof. That Act is no less prohibitory of a remedy by a proceeding or suit in equity to charge the collector of the excessive charges as a trustee ex maleficio thereof. Every reason given by the Supreme Court why the Act practically abrogates actions at law on account of the collections of such excessive rates applies with equal force to the suit or proceeding to enforce such a trust together with the further and not less conclusive reason that the basis of such a suit or proceeding is not only inconsistent with but diametrically opposed to the basis and theory of the remedy by the reparation for damages prescribed by the Act of Congress.

The remaining question is—are the claims of these interveners members of that small class of unpaid claims the considerations of which were parts of the current expenses of the ordinary operation of the railroad for wages, supplies, materials and like necessities of operation during the six months immediately preceding the impounding of the income by this court in 1914 for the benefit of the holders of bonds secured by prior recorded mortgages. To support an affirmative answer to this question and their trust theory counsel cite and seem to rely with confidence on the decision of the court of appeals of this circuit in *Love vs. North American Company*, 229 Fed. 103. The opinion in that case has been thoughtfully studied and considered before reaching any of the conclusions on these subjects in the case in hand. But the decision of that case was not conditioned [fol. 220] by the provisions of the Act to Regulate Commerce or by proceedings thereunder; the excessive charges in that case were collected within approximately six months preceding the receivership and the material facts of that case were, in the opinion of the court, so radically different from those in the case under consideration that the decision and opinion therein are inapplicable to them.

It is indispensable to that equity which permits a court of chancery to decree the claim of an unsecured creditor to the property of a railroad company or its proceeds prior in right, superior in equity, or preferred in payment to the

claims of bondholders secured by prior recorded mortgages or liens, (1) that the consideration of such a claim was a part of the current expenses of the ordinary operation of the property of the mortgagor incurred in the usual course of its business for labor, supplies, or other like necessities of operation. *Illinois Trust & Savings Bank vs. Dowd*, 105 Fed. 123, 124 141, 149; *Southern Railroad Company vs. Carnegie Steel Co.*, 176 U. S. 257, 259, 296; *Lackawana Iron & Coal Co. vs. Farmers Loan & Trust Co.*, 176 U. S. 298, 315; *Chicago & A. Ry. Co. vs. United States & Mexico Trust Co.*, 225 Fed. 940, 943; *Rogers Ballast Car Co. vs. Omaha, Kansas City & E. R. Co. et al*, 154 Fed. 629, and (2) that the consideration was paid and the liability of the mortgagor company on account thereof was incurred within six months immediately preceding the impounding of the property by the court for the benefit of the bondholders. *Southern Railway Company vs. Carnegie Steel Co.*, 176 U. S. 292; *Westinghouse Air Brake Co. vs. Kansas City Southern Ry. Co.*, 137 Fed. 26, 40; *Blair vs. St. Louis, H. & K. R. Co.*, 22 Fed. 471, 474; *Crane vs. Fidelity Trust Company*, 238 Fed. 693, 696, 697.

The reason for the allowance of the preferential payment of claims for wages, supplies, and like necessities of the ordinary operation of the railroad during six months immediately preceding the impounding of its property and income is that the holders of such claims may rely for the payment thereof, not upon the personal liability of the railroad, but upon the expected income from the operation of the railroad company for the succeeding six months, and upon the practice of courts of equity, upon impounding the property and its income to give such claims preference in payment over the payment of claims secured by prior recorded liens. But the claims of these interveners are not claims for wages, supplies or any such like necessities of the ordinary operation of the railroad. They are not for a part of the expenses of the railroad. They are for a part of its income. They are for the collections from the interveners of excessive charges. Such collections were not a part of the usual or necessary expenses of the operation of the railroad. Railroad Companies do not ordinarily and usually in their operation collect excessive charges. They were a part of the unusual and, the Commission afterwards held,

of the unnecessary income of the mortgagor. Nor did the interveners pay them in reliance upon the expected income of the railroad company for the six months succeeding the respective times of their payments in 1907 and 1908, but their reliance was upon the personal reliability of the railroad company. So it is that these claims fall neither within the class of preferential claims nor within the reasons for the existence of that class.

Nor were the payments of these charges made nor did the railway company incur its liability on account of their collection within six months or approximately within six months immediately preceding the impounding of the property and income of the railroad company for the benefit of the bondholders in 1914. On the other hand these payments were made and the liability of the railroad on account of them was incurred more than five years before that impounding. While it is true that there are courts which have sometimes allowed preferences in payments to claims that have accrued more than six months before the impounding, the established rule of the Supreme Court and of the courts of this circuit limits the allowance of such claims to those incurred within the six months of approximately within that time.

The enforcement of a rule limiting the allowance of preferential claims of this character to those incurred within that time is both reasonable and necessary to the protection of claims secured by prior recorded mortgages and liens. Preferential claims of this class are not of record—are generally incurred without notice to or the knowledge of the holders of prior recorded liens. If, during longer periods than six months, if, during many more months or during years, the mortgagor and its unsecured creditors may continue to create such preferential liens, they can thus pile up large debts of the mortgagor secured by secret liens paramount to the liens of the mortgages and of other recorded liens upon the property of the mortgagor; by paying the interest or causing it to be paid, on the bonds secured by the prior liens meanwhile they can deprive the [fol. 222] bondholders of the possession and application of the property to their claims until their security is destroyed or so impaired that their wiser course may be to abandon the property to the holders of such secret preferential

claims. It was to prevent such results that this limitation was established, and it is a just and equitable one. *Westinghouse Air Brake Co. vs. Kansas City & Southern Ry. Co.*, 137 Fed. 26, 40 and cases there cited.

The reason that six months immediately preceding the impounding for the benefit of the secured liens has been generally fixed as the time within which such preferential claims may arise, is because usually a six months' interval passes between the dates when installments of interest on bonds fall due and because mortgages provide, and when they do not parties in interest assume, that when an installment of interest is paid, current expenses to that time have either been paid or funds to pay them have been provided. *Crane vs. Fidelity Trust Company*, 238 Fed. 693, 696.

For the reasons which have now been stated the court finds itself unable to resist the conclusion that if the prosecution of the proceedings commenced by the intervening petitions herein had not been barred by laches the claims of the interveners to liens upon or interests in the property of the proceeds of the property of the mortgagor company prior in lien or right, or superior in equity to the prior recorded liens of the mortgages foreclosed could not be sustained.

Let the intervening petitions and supplemental petitions be dismissed without costs to either party.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DISMISSING PETITIONS OF INTERVENTION—Filed  
August 23, 1922

[fol. 223] On Exceptions to the Report in Favor of the Interveners of Honorable Thomas T. Fauntleroy, Special Master

Mr. W. F. Evans and Mr. E. T. Miller for exceptors.  
Mr. S. H. Cowan, Mr. D. F. Murphy, Mr. John S. Leahy,  
and Mr. Walter H. Saunders for the interveners.

Upon consideration of the exceptions to the Report of Hon. Thomas T. Fauntleroy, Special Master, the pleadings

and evidence before the Master, the briefs and arguments of counsel:

It is hereby ordered and adjudged that the exceptions to those parts of the report of the Special Master which are contrary to or inconsistent with the views of the Court expressed in the memorandum opinion filed herewith, be and they are hereby sustained, and that the Intervening Petition and the Supplemental Petitions of the Interveners, be and they are hereby dismissed without costs to either party.

Dated this 19th day of August A. D. 1922.

Approved:

(Signed) Walter H. Sanborn, Senior Circuit Judge.

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IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed February 17, 1923

The above named interveners, E. B. Spiller and E. B. Spiller, et al., conceiving themselves aggrieved by the order entered on August 23, 1922, in the above entitled proceeding, do hereby appeal from said order to the United States Circuit Court of Appeals, Eighth Circuit, and they pray that this, their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals, Eighth Circuit.

S. H. Cowan, John S. Leahy, David A. Murphy,  
Walter H. Saunders, Attorneys for Interveners.

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[fol. 224] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed February 17, 1923

Now come E. B. Spiller and E. B. Spiller et al., interveners in the above entitled cause, and file the following assignments of error upon which they will rely in their appeal from the order made by this Honorable Court on the 23rd day of August, 1923, dismissing the intervening peti-

tions and the supplemental intervening petitions of both E. B. Spiller and E. B. Spiller et al., interveners herein, disallowing the claims of said interveners and denying the claims of said interveners to priority in the payment of their claims again- said defendant and said St. Louis-San Francisco Railway Company.

## I

That the Court, in an opinion and order by Hon. Walter H. Sanborn, Circuit Judge, erred in sustaining the first exception of defendant, St. Louis & San Francisco Railroad Company, and erred in sustaining the first exception of defendant, St. Louis & San Francisco Railroad Company, and erred in sustaining the first exception of the defendant, St. Louis-San Francisco Railway Company, to the report there-  
tofore filed in said cause by Hon. Thomas T. Fauntleroy, Special Master.

## II

That the Court erred in sustaining the second exception of the defendant, St. Louis & San Francisco Railroad Company, and the second exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## III

That the Court erred in sustaining the third exception of the defendant, St. Louis & San Francisco Railroad Company and the third exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## IV

That the Court erred in sustaining the fourth exception of the defendant, St. Louis & San Francisco Railroad Company, and the fourth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

[fol. 225]

## V

That the Court erred in sustaining the fifth exception of the defendant, St. Louis & San Francisco Railroad Com-

pany and the fifth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## VI

That the Court erred in sustaining the sixth exception of the defendant, St. Louis & San Francisco Railroad Company and the sixth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## VII

That the Court erred in sustaining the seventh exception of the defendant, St. Louis & San Francisco Railroad Company, and the seventh exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## VIII

That the Court erred in sustaining the eighth exception of the defendant, St. Louis & San Francisco Railroad Company, and the eighth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## IX

That the Court erred in sustaining the ninth exception of the defendant, St. Louis & San Francisco Railroad Company, and the ninth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## X

That the Court erred in sustaining the tenth exception of the defendant, St. Louis & San Francisco Railroad Company, and the tenth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XI

That the Court erred in sustaining the eleventh exception of the defendant, St. Louis & San Francisco Railroad Company, and the eleventh exception of the defendant, St.

[fol. 226] Louis-San Francisco Railway Company, to the report of said Special Master.

## XII

That the Court erred in sustaining the twelfth exception of the defendant, St. Louis & San Francisco Railroad Company, and the Twelfth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XIII

That the Court erred in sustaining the thirteenth exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirteenth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XIV

That the Court erred in sustaining the fourteenth exception of the defendant, St. Louis & San Francisco Railroad Company, and the fourteenth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XV

That the Court erred in sustaining the fifteenth exception of the defendant, St. Louis & San Francisco Railroad Company, and the fifteenth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XVI

The the Court erred in sustaining the sixteenth exception of the defendant, St. Louis & San Francisco Railroad Company, and the sixteenth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XVII

That the Court erred in sustaining the seventeenth exception of the defendant, St. Louis & San Francisco Railroad Company, and the seventeenth exception of the de-

fendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

### XVIII

That the Court erred in sustaining the eighteenth exception of the defendant, St. Louis & San Francisco Railroad Company, and the eighteenth exception of the defendant, [fol. 227] ant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

### XIX

That the Court erred in sustaining the nineteenth exception of the defendant, St. Louis & San Francisco Railroad Company, and the nineteenth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

### XX

That the Court erred in sustaining the twentieth exception of the defendant, St. Louis & San Francisco Railroad Company, and the twentieth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

### XXI

That the Court erred in sustaining the twenty-first exception of the defendant, St. Louis & San Francisco Railroad Company, and the twenty-first exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

### XXII

That the Court erred in sustaining the twenty-second exception of the defendant, St. Louis & San Francisco Railroad Company, and the twenty-second exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXIII

That the Court erred in sustaining the twenty-third exception of the defendant, St. Louis & San Francisco Railroad Company, and its twenty-third exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXIV

That the Court erred in sustaining the twenty-fourth exception of the defendant, St. Louis & San Francisco Railroad Company, and the twenty-fourth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXV

That the Court erred in sustaining the twenty-fifth exception of the defendant, St. Louis & San Francisco Railroad Company, and the exception of the defendant, St. [fol. 228] Louis-San Francisco Railway Company, to the report of said Special Master.

## XXVI

That the Court erred in sustaining the twenty-sixth exception of the defendant, St. Louis & San Francisco Railroad Company and the exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXVII

That the Court erred in sustaining the twenty-seventh exception of the defendant, St. Louis & San Francisco Railroad Company, and the twenty-seventh exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXVIII

That the Court erred in sustaining the twenty-eighth exception of the defendant, St. Louis & San Francisco Rail-

road Company, and the twenty-eighth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXIX

That the Court erred in sustaining the twenty-ninth exception of the defendant, St. Louis & San Francisco Railroad Company, and the twenty-ninth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXX

That the Court erred in sustaining the thirtieth exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirtieth exception of the St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXI

That the Court erred in sustaining the thirty-first exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirty-first exception of the St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXII

That the Court erred in sustaining the thirty-second exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirty-second exception of the St. [fol. 229] Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXIII

That the Court erred in sustaining the thirty-third exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirty-third exception of the St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXIV

That the Court erred in sustaining the thirty-fourth exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirty-fourth exception of the St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXV

That the Court erred in sustaining the thirty-fifth exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirty-fifth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXVI

That the Court erred in sustaining the thirty-sixth exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirty-sixth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXVII

That the Court erred in sustaining the thirty-seventh exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirty-seventh exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXVIII

That the Court erred in sustaining the thirty-eighth exception of the defendant, St. Louis & San Francisco Railroad Company, and the thirty-eighth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XXXIX

That the Court erred in sustaining the thirty-ninth exception of the defendant, St. Louis & San Francisco Rail-

road Company, and the thirty-ninth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

#### XL

That the Court erred in sustaining the fortieth exception of the defendant, St. Louis & San Francisco Railroad Company, and the fortieth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

#### XLI

That the Court erred in sustaining the forty-first exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-first exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

#### XLII

That the Court erred in sustaining the forty-second exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-second exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

#### XLIII

That the Court erred in sustaining the forty-third exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-third exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

#### XLIV

That the Court erred in sustaining the forty-fourth exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-fourth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XLV

That the Court erred in sustaining the forty-fifth exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-fifth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XLVI

That the Court erred in sustaining the forty-sixth exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-sixth exception of the defendant, [fol. 231] ant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XLVII

That the Court erred in sustaining the forty-seventh exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-seventh exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XLVIII

That the Court erred in sustaining the forty-eighth exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-eighth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## XLIX

That the Court erred in sustaining the forty-ninth exception of the defendant, St. Louis & San Francisco Railroad Company, and the forty-ninth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## L

That the Court erred in sustaining the fiftieth exception of the defendant, St. Louis & San Francisco Railroad Company, and the fiftieth exception of the defendant, St. Louis-

San Francisco Railway Company, to the report of said Special Master.

LI

That the Court erred in sustaining the fifty-first exception of the defendant, St. Louis & San Francisco Railroad Company, and the fifty-first exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

LII

That the Court erred in sustaining the fifty-second exception of the defendant, St. Louis & San Francisco Railroad Company, and the fifty-second exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

LIII

That the Court erred in sustaining the fifty-third exception of the defendant, St. Louis & San Francisco Railroad Company, and the fifty-third exception of the defendant, St. [fol. 232] Louis-San Francisco Railway Company, to the report of said Special Master.

LIV

That the Court erred in sustaining the fifty-fourth exception of the defendant, St. Louis & San Francisco Railroad Company, and the fifty-fourth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

LV

That the Court erred in sustaining the fifty-fifth exception of the defendant, St. Louis & San Francisco Railroad Company, and the fifty-fifth exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

LVI

That the Court erred in sustaining the fifty-sixth exception of the defendant, St. Louis & San Francisco Railroad Company, and the fifty-sixth exception of the defendant,

St. Louis-San Francisco Railway Company, to the report of said Special Master.

## LVII

That the Court erred in sustaining the fifty-seventh exception of the defendant, St. Louis & San Francisco Railroad Company, and the fifty-seventh exception of the defendant, St. Louis-San Francisco Railway Company, to the report of said Special Master.

## LVIII

That the Court erred in dismissing the intervenors intervening petitions and supplemental intervening petitions of both E. B. Spiller and E. B. Spiller, et al.

## LIX

That the Court erred in disallowing the claims of said intervenors, E. B. Spiller and E. B. Spiller, et al.

## LX

That the Court erred in denying the claims of said intervenors, E. B. Spiller and E. B. Spiller et al., for preferential payment of the claims of said intervenors.

## LXI

That the Court erred in denying the claims of said intervenors, E. B. Spiller and E. B. Spiller et al., for preferential payment, and erred in ruling and holding that said claims were not prior in right and superior in equity to the claims of all other creditors of said defendants, including bondholders.

## LXII

That the Court erred in disallowing the claims of intervenors, E. B. Spiller and E. B. Spiller et al., in the sum of \$35,465.80 with interest from Aug. 1, 1916, and in not entering judgment accordingly.

## LXIII

That the Court erred in disallowing the claims of intervenors, E. B. Spiller and E. B. Spiller et al., for preferential payment in the sum of \$35,465.80, with interest from August 1, 1916, and in not entering judgment accordingly.

## LXIV

That the Court erred in not finding and holding that the said intervenors, E. B. Spiller and E. B. Spiller et al., were entitled to all the relief prayed in their respective intervening petitions and supplemental intervening petitions, and in not entering judgment accordingly.

## LXV

That the Court erred in disallowing the claims of intervenors, E. B. Spiller and E. B. Spiller et al., for attorneys' fees, prayed for in their respective intervening petitions and supplemental intervening petitions, and in not entering judgment accordingly.

## LXVI

That the Court erred in not holding and finding that the said intervenors, E. B. Spiller and E. B. Spiller et al., were entitled to attorney's fees, as prayed in their respective intervening petitions and supplemental intervening petitions, and in not entering judgment accordingly.

Wherefore, by reason of the aforesaid errors, herein complained of, said intervenors, E. B. Spiller and E. B. Spiller et al., pray this Honorable Court to reverse the decree of Honorable Walter H. Sanborn, District Judge sitting in the District Court as aforesaid, entered in the matters of said interventions in the above entitled cause, signed under date of August 19, 1922, and filed and entered of record of said cause under date of August 23, 1922, and that said matters be remanded to said District Court, with instructions to enter a decree in favor of said intervenors [fol. 234] and each of them, as prayed for in their respective interventions.

S. H. Cowan, John S. Leahy, David A. Murphy,  
Walter H. Saunders, Solicitors for Intervenors.

## IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed February 17, 1923

Now, on this day, come the above named intervenors, E. B. Spiller and E. B. Spiller, et al., and present their petition for appeal from the order entered on August 23rd, 1922, in the above entitled proceedings to the United States Circuit Court of Appeals, Eighth Circuit, and present therewith their assignment of errors, their appeal bond in the sum of Five Hundred and no/100 Dollars (\$500.00) and pray that citation issue to defendants, St. Louis & San Francisco Railroad Company and St. Louis-San Francisco Railway Company, returnable in sixty days from the date thereof; and the Court doth:

Order that said appeal be allowed as prayed, that said bond be approved and that citation issue to defendant, as prayed.

(Signed) C. B. Faris, Judge.

\* \* \* \* \*

"The appellants gave an appeal bond in this case in due form of law, which was properly allowed and approved by the Court:"

## IN UNITED STATES DISTRICT COURT

ELECTION AS TO PRINTING—Filed February 17, 1923

To the Clerk of said Court:

You are hereby notified that the above named E. B. Spiller and E. B. Spiller, et al., Intervenors in the above entitled cause, and Appellants in the United States Circuit Court of Appeals, hereby elect to take and file in said Court of Appeals in typewritten form a transcript of the record [fol. 235] and proceedings in said interventions, the same to be printed under supervision of the Clerk of said Court of Appeals.

(Signed) S. H. Cowan, John S. Leahy, David A. Murphy, Walter H. Saunders.

## IN UNITED STATES DISTRICT COURT

PRECIPE FOR TRANSCRIPT OF RECORD—Filed February 19,  
1923

The Clerk of said Court is hereby requested to make a transcript of the record of appeal of E. B. Spiller and E. B. Spiller et al., Interveners in the above entitled cause, from orders made in said cause by Honorable Walter H. Sanborn, Circuit Judge, filed on the 23d day of August, 1922 disallowing intervening petitions and supplemental intervening petitions of both E. B. Spiller and E. B. Spiller et al., Interveners herein, disallowing the claims of said interveners and denying the claims of said interveners to priority in the payment of their claims against said defendant, and to include in said transcript of the record the following papers and no others:

(1) Bill of complaint of the North American Company, Plaintiff vs. St. Louis & San Francisco Railroad Company, Defendant, In Equity No. 4174.

(2) The consent of the defendant to the appointment of a Receiver;

(3) The order appointing a receiver;

(4) The petition of intervention of E. B. Spiller and order granting leave to file;

(5) The petition of intervention of E. B. Spiller et al.; and order granting leave to file;

(6) The supplemental petition of intervention of E. B. Spiller; and order granting leave to file;

(7) The supplemental petition of intervention of E. B. Spiller et al.; and order granting leave to file;

(8) The answers of the defendant and St. Louis-San Francisco Railway Company to the petition of intervention of E. B. Spiller;

[fol. 236] (9) The answers of the defendant and St. Louis-San Francisco Railway Company to the supplemental petition of intervention of E. B. Spiller;

(10) The answers of the defendant and St. Louis-San Francisco Railway Company to the petition of intervention of E. B. Spiller, et al.;

(11) The answers of the defendant and St. Louis-San Francisco Railway Company to the supplemental petition of intervention of E. B. Spiller, et al.

(12) Any other answers filed by any other parties to said proceeding, to said cause, to said interventions or either of them, if any shall have been filed;

(13) The order of reference of said interventions to Hon. T. Fauntleroy, Special Master.

(14) The reports of the Special Master on said interventions;

(15) All evidence taken by the Special Master and returned with his Report;

(16) Stipulation of counsel for the consolidation of the interventions of E. B. Spiller and E. B. Spiller et al.;

(17) Order consolidating said interventions;

(18) The Exceptions to the Report of the Special Master filed by the defendant St. Louis & San Francisco Railroad Company and St. Louis-San Francisco Railway Company.

(19) The opinion and orders filed in said cause by Honorable Walter H. Sanborn, Circuit Judge pertaining to said Interventions herein;

(20) The petition for an appeal and the allowance thereof;

(21) The Citation;

(22) The Assignment of Errors;

(23) The Præcipe for a Transcript;

(24) The Summary of receipts and disbursements attached to each of the reports of the Special Master;

[fol. 237] (25) Summary of receipts and disbursements attached to each of the reports of the Receiver from the — day of —, 19—, to the — day of —, 19—.

S. H. Cowan, John S. Leahy, David A. Murphy, Walter H. Saunders, Solicitors for Petitioners.

Service of copy of foregoing præcipe acknowledged this 19th day [—] Feby., 1923.

(Signed) E. T. Miller, Atty. for St. L. S. F. Ry. Co.  
and St. L. and S. F. R. R. Co.

\* \* \* \* \*

“By orders duly entered of record, the time for filing the transcript herein was extended from April 17, 1923 to May 9, 1924.”

## IN UNITED STATES DISTRICT COURT

**Summary of Evidence**—Filed June 16, 1924

## CAPTION

In the Matter of the Intervening Petition and Supplemental  
Petition of E. B. SPILLER et al. No. 402

In the Matter of the Intervening Petition and Supplemental  
Petition of E. B. SPILLER. No. 403

Testimony taken in the matter of the intervening petition and the supplemental intervening petition of E. B. Spiller et al. No. 402, and in the matter of the intervening petition and supplemental intervening petition of E. B. Spiller No. 403, before the special master, Honorable Thomas T. Fauntleroy, at room 1025 Frisco building, in the city of St. Louis, State of Missouri

Be it remembered that on the 29th day of November, 1921, the above entitled matters coming on to be heard before Honorable Thomas T. Fauntleroy, Special Master, at Room 1025 Frisco Building, in the City of St. Louis, State of Missouri, all the parties to the record having been given due notice of the hearing, D. A. Murphy, S. H. Cowan, John S. Leahy, and Walter H. Saunders, appearing for and on [fol. 238] behalf of the Intervening petitioners, E. B. Spiller and E. B. Spiller, et al., and W. F. Evans and E. T. Miller, appearing for and on behalf of the defendant, St. Louis & San Francisco Railroad Company, and the St. Louis-San Francisco Railway Company, the following proceedings were had therein, to-wit:

## STIPULATION TO TRY ALL INTERVENING PETITIONS TOGETHER

It was stipulated and agreed by and between the intervenors, and the defendant, and the St. Louis-San Francisco Railway Company, that the original and supplemental intervening petitions of E. B. Spiller and the original and supplemental intervening petitions of E. B. Spiller, et al., be tried together, and that the evidence adduced herein will apply to all four intervening petitions. (page 2.)

Mr. Miller: Then they may be all tried together. It is understood that the defendant and the receivers made certain objections to the filing of the interventions and to the hearing of the interventions. These objections were made before Judge Sanborn, when the application for leave to file was heard, and Judge Sanborn overruled the objections.

That the Master may understand the situation, in our answers here we are setting up the same grounds, among others, that we advanced before Judge Sanborn to the filing of the interventions, and our appearing now and taking testimony and making stipulations in the case it is understood will not be deemed a waiver of the objections that we made to the filing and to the hearing of the interventions; in other words, we are preserving all of our objections.

#### COLLOQUY BETWEEN MASTER AND COUNSEL

Mr. Murphy: We contend that the order on our petition for leave to file intervening petitions made by Judge Sanborn settles that issue. We don't want to put ourselves in the position of even agreeing to go behind Judge Sanborn's opinion on the matter.

In 1903 various railroad companies increased their rates on cattle to the primary markets three cents a hundred pounds. In 1904 the Cattle Raisers' Association of Texas filed a petition before the Interstate Commerce Commission in which it was alleged that those increases were unreasonable and unjust to the extent of the increase, and asked that they be so declared. At that time I might say to your Honor the Interstate Commerce Commission had no power to fix rates for the future. In August, 1905, the Interstate Commerce Commission after a full hearing made a finding [fol. 239] and order on that petition. It held that the rate put into effect in 1903 was unjust and unreasonable to the extent of the increase of three cents, and that the railroad companies should be required to desist from charging it. The Cattle Raisers' Association thought that the findings of fact in that opinion were not sufficient and they filed a petition for more specific findings of fact. Of course, that held up the actual order requiring the railroad companies to desist from charging it. In 1906 the Hepburn bill was passed, amending the Act to Regulate Commerce, and for the first time by it the Interstate Commerce Commission

was given power to fix rates for the future. After the law went into effect the Cattle Raisers' Association filed an amended or supplemental petition in which they asked for the relief that they had asked for in their original petition, and in which they asked that the Commission fix a reasonable rate and for reparation. The Interstate Commerce Commission summoned all of the railroad companies involved and another and rather extensive hearing was held. After the evidence was completed the Interstate Commerce Commission in April, 1908, handed down an opinion and decision in which they reaffirmed their conclusions handed down in 1905 in which they fixed the new rate, the rate fixed being the rate that obtained in 1903 before the raise; holding, however, in that opinion that in considering claims for reparation they would not consider any claims that had accrued prior to the filing of that petition, which was August 28 or 29, 1906. Subsequently they considered the question of reparation and in 1914, January I think, they made orders of reparation. Mr. Spiller was the assignee of a great many claims of shippers, having become such prior to the order of reparation. There were other claims that had not been assigned to him, so that really we have this situation; That an order of reparation was made in favor of Spiller against all the roads to the extent of the overcharges, as assignee, and then orders of reparation were made in favor of a large number of shippers, including Spiller, who at some subsequent time had become assignee of some few shippers. Copies of those orders, as required by the Interstate Commerce Commission, were served upon all the railroad companies, including the St. Louis and San Francisco, which refused to comply with the orders of reparation, or refused to repay these overcharges to shippers. I might say here that the Interstate Commerce Commission gave the carriers six months from the date of the order of reparation to make the payment, and shortly after the expiration of that six months suits were filed against the individual railroad companies in Fort Worth, suits against [fol. 240] the [indiv-ual] railroad companies were filed in Kansas City, and suits against the railroad companies jointly were filed at Kansas City. The reason for the filing of those suits was that they wanted to be sure of jurisdiction. I think that individual suits against some of the railroads, including the Frisco, were filed down here. Service was had upon all the roads, including the Frisco, in the cases

that we call the joint cases at Kansas City. They appeared and answered. The District Court at Kansas City rendered judgment in favor of the plaintiffs in both those suits. We may refer to those suits in the evidence and in the trial as 4308 and 4320.

The Master: Was that in the District Court at Kansas City?

Mr. Murphy: In the District Court at Kansas City. All of the defendants, including the St. Louis and San Francisco Railroad Company, appealed from the judgment of Judge Van Valkenburgh to the Circuit Court of Appeals. Judgment in those cases was rendered by Judge Van Valkenburgh on August 16, 1916. On the 28th day of August, 1916, the railroad companies had completed at least the preliminary steps of their appeals. They had sued out writs of error, writs of error had been granted, orders made, assignments of error filed, and I think in most cases appeal bonds filed. Those cases were presented in the Court of Appeals, and in 1918—I don't remember just the date—that will appear from the testimony—the Circuit Court of Appeals reversed the judgment of Judge Van Valkenburgh and remanded the cases. Plaintiff went to the Supreme Court of the United States on a writ of certiorari and writs of error both. The Supreme Court entertained the writ of certiorari, and after argument and further briefing of the cases there the Supreme Court in one of the last days of May, 1920, reversed the Circuit Court of Appeals and affirmed the decision of Judge Van Valkenburgh.

The Master: Pardon me. Wasn't the point raised whether or not you should have filed your bill before the court in the receivership proceedings?

Mr. Murphy: No, that is the one point that we think Judge Sanborn has settled in granting our bill. Of course, you may desire to hear evidence on that, but I think that Judge Sanborn's order overruling the objecting to the filing of the bill of intervention and allowing it to be filed was a final order. Practically the same objections to the grant- [fol. 241] ing of the petition for leave to intervene were made before Judge Sanborn as are now set up in the pleas in bar here.

\*     \*     \*     \*     \*

Mr. Murphy: When the judgment was originally rendered by Judge Van Valkenburgh under the Act to Regulate Commerce he made an allowance for attorneys fees and taxed them as costs. When the case back from the Supreme Court we filed an application for an additional allowance of attorneys fees. That was sustained in July, 1929, and an additional allowance made, taxed as costs in the case. As I said a minute ago, the railroad companies had given appeal bonds. Of course, this suit against the Prince was filed in Kansas City after the receivership proceedings have had commenced, and the bond I presume was arranged for by the receiver. At any rate, the railway companies paid the penalty of that bond, using part of the moneys thus paid to pay the court costs proper, and the balance, so far as it would go, was applied upon the attorneys fees taxed as costs. But the penalty of the bond was not sufficient to cover the entire amount of the attorneys fees taxed as costs, so we are seeking to recover those attorneys fees taxed as costs under what will be designated here as the supplemental bill of intervention, which will be filed after objections made to Judge Sanborn upon an order granting us leave to file it made by Judge Sanborn. Our grounds to recover those costs are different from the grounds that we urge for the recovery of the overcharges.

The Master: Does this proceeding include the claim for overcharges and attorneys fees?

Mr. Murphy: In the main intervention we are asking that the claim for overcharges be allowed as a claim prior in equity and superior in right.

The Master: Well, you are asking those for attorneys fees?

Mr. Murphy: Not in the intervention, but for attorneys fees taxed as costs in the District Court in the Western District of Missouri in the main case there, but we are asking for no attorneys fees for any service rendered after the order of Judge Van Valkenburgh in July making an additional order for attorneys fees. The grounds for our claim that those attorneys fees should be taxed as costs are based [Vol. 242] on the services rendered in our suits in the District Court, in the Court of Appeals and in the Supreme Court.

It was agreed between the parties, for the purpose of the record, that case No. 722—No. A583—Cattle Raisers' Association vs. The Missouri-Kansas & Texas Railway Company, was decided by the Interstate Commerce Commission, on January 12, 1914, (p. 8); that the case bore that number all the way through from 1904, when the order of reparation was made; that the St. Louis and San Francisco Railroad Company, advanced its rates in March, 1903, that being the advance in rates complained of in this proceeding; that the petition complaining of the advance in rates was filed February 10, 1904, and alleged that the rates were unreasonable and unjust; that the rates were held unreasonable by the Interstate Commerce Commission on August 16, 1905, the report of said Commission in said proceeding being found in Volume 11, Interstate Commerce Commission reports, at page 298; that a new petition was filed by the Interveners on August 29, 1906, and that the rate was again held to be unreasonable by the Interstate Commerce Commission on April 14, 1908; said report being found in Volume 13, Interstate Commerce Commission Reports, at page 419; that the new rates were made effective on November 17, 1908; that suit was filed in the United States District Court at Kansas City, Missouri, on January 11, 1915 (p. 9).

The Master: Mr. Murphy, are you presenting this now on the theory to establish your position that you have been diligently pursuing your remedy?

Mr. Murphy: Yes.

Interveners offer the following documentary evidence (P. 9):

Mr. Murphy: I offer opinion and finding of the Interstate Commerce Commission, dated August 16, 1905. \* \* \* I will identify it as the opinion and finding of the Interstate Commerce Commission, reported in 11 Interstate Commerce Reports, at page 298. For the information of the Master, I will here read into the record one short paragraph, because that may obviate the necessity of going to the Report for it.

Mr. Miller: Well, I want to make an objection to the offer on the specific grounds set forth in the answers of the

defendant, and of the railway company. Objection is made to the introduction of this evidence by both of those parties. It is further objected to because the judgment in the Federal Court at Kansas City, Missouri, merged all prior [fol. 243] claims against the defendant therein. The testimony therefore, is not material for any purpose in this case.

Which objection was by the Special Master overruled; to which action and ruling of the Special Master, defendant, by counsel, then and there duly excepted and still excepts (P. 10).

Said opinion and finding was marked Exhibit 1, and is in words and figures as follows, to-wit:

\* \* \* \* \*

"In order to avoid the expense of printing, the decision of the Interstate Commerce Commission, in the case of The Cattle Raisers' Association of Texas vs. The M. K. & T. Railway Company, et al, No. 732, 11 I. C. C., p. 296, reference is hereby made to said case, reported in said volume, and dated August 16, 1905."

Upon request of counsel for defendant, it was ordered by the Special Master that in making the specific objections that are contained in the answers of the defendant and the St. Louis-San Francisco Railway Company, counsel may merely refer to said objections without restating them (P. 10).

Counsel for intervenors then read from the report and opinion of the Interstate Commerce Commission just offered:

"Conclusions: It has been found that the advances made during the year 1903, as shown by the Appendix, were unjust and unreasonable, and that the present rates are unjust and unreasonable by the amount of said advances. The defendant therefore should be required to cease and desist from the maintenance of these rates."

The motion of the defendant to strike out that part of the report and opinion read by counsel for intervenors was overruled; to which action and ruling of the Special Mas-

ter, defendant, by counsel, then and there duly excepted and still excepts. (P. 10.)

Mr. Murphy: We now offer in evidence petition of the Cattle Raisers' Association of Texas to reopen the case, filed August 29, 1906.

Mr. Miller: Same objection.

[fol. 244] The Master: It looks to me that all of these bear upon the idea advanced by Judge Sanborn as showing due diligence on the part of these petitioners, that they throw light upon the transaction. I think that any steps that were taken by these parties in presenting their claim come within the purview of Judge Sanborn's order. I overrule the objection.

To which ruling of the Special Master, defendant duly excepted and still excepts (p. 11).

Mr. Miller: I take it, also, that it is not necessary to make a motion to strike out the testimony; that we may consider that a motion to strike out has been made.

Mr. Murphy: That is satisfactory to us.

Said paper last offered was marked Exhibit 2, and same is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF  
MISSOURI

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

In the Matter of the Intervening and Supplemental Intervening Petitions of E. B. SPILLER et al. Intervening Petition No. 402

In the Matter of the Intervening and Supplemental Intervening Petitions of E. B. SPILLER. Intervening Petition No. 403

Consolidated under the Style: In the Matter of the Interventions of E. B. SPILLER et al. Consolidated Cause, Final, No. 4174

EXHIBIT 2—STIPULATION AS TO PETITION OF CATTLE RAISERS' ASSOCIATION TO REOPEN CASE

It is hereby stipulated and agreed by and between the above named interveners, and the St. Louis & San Francisco Railroad Company, and the St. Louis-San Francisco Railway Company, parties herein, that the Clerk of this Court may omit from the transcript of the record and proceedings in this cause to be filed in the United States Circuit Court of Appeals, Eighth Circuit, interveners' Exhibit No. 2, the petition of the Cattle Raisers' Association [fol. 245] of Texas, to reopen case, referred to in the interveners' summary of evidence filed herein.

(Signed) John S. Leahy, Walter H. Saunders, D. A. Murphy, S. H. Cowan, Attorneys for Interveners.  
W. F. Evans, E. T. Miller, Attorneys for St. Louis & San Francisco Railroad Co. and St. Louis-San Francisco Railway Company.

August 21st, 1924.

Mr. Murphy: I offer the decision of the Interstate Commerce Commission, November 14, 1906, on the petition for a more specific finding of fact.

Mr. Miller: Same objection.

The Master: Paper will be received.

To which ruling of the Master the defendant then and there duly excepted and still excepts (p. 11).

Said paper was marked Exhibit 3 and is in words and figures as follows, to-wit:

### EXHIBIT 3

#### Exhibit 3—Opinion of Interstate Commerce Commission on Petition to Reopen Case

No. 732

The Cattle Raisers' Association of Texas

v.

Missouri, Kansas and Texas Railway Company et al.

Petition to Reopen Case Filed August 29, 1906; Submitted  
November 9, 1906; Decided November 14, 1906

This case was decided in favor of complainant August 16, 1905. Subsequently complainant's motion for additional and more specific findings was granted, and the case again taken under advisement. The Act to Regulate Commerce was amended June 29, 1906, and thereafter complainant filed its petition praying in substance that the Commission [fol. 246] proceed in the case with a view to making an order therein under the new fifteenth section in said act. The new section 15 confers upon the Commission power to enforce what has always been required in the statute, namely, just and reasonable rates, by the application of a new remedy, and, as applied to cases like this, in that way alone has the jurisdiction of the Commission been enlarged. The new section provides as conditions that there shall be formal complaint and full hearing. Both of these prerequisites have been practically complied with in this proceeding, but both complainant and defendants should have

leave to submit whatever additional testimony they desire, and thereupon it is not only the right, but the imperative duty of this Commission, to make an order for or against the defendants under the new fifteenth section. To hold otherwise, this case and many others in which large sums of money and much time have been expended must fail, since the old section is superseded by the new, and the amending act contains no provision continuing the old section in force as to cases previously brought before the Commission; the law should not be so interpreted in the absence of explicit provision to that effect. Case set down for further hearing, reexamination of the whole record by the Commission, and procedure under the new fifteenth section.

### Report and Opinion of the Commission

#### PROUTY, Commissioner:

February 10, 1904, the complainant filed its petition alleging that certain advances in rates on live stock from various points in the Southwest to Kansas City and other live-stock markets were unjust and unreasonable, and praying that the Commission would order the defendants to cease and desist from continuing such rates in effect and for reparation. To this the defendants made answer that the advanced rates were just and reasonable.

Upon the issue thus formed a great mass of testimony was taken and elaborate arguments presented; and on August 16, 1905, the Commission filed its report and opinion sustaining, in the main, the contention of the complainant. On November 18 following the complainant filed with the Commission a motion for additional and more specific findings. This motion was granted and the matter again taken under advisement for that purpose. No additional findings have yet been made, and the case is still pending. No order has ever been made.

[fol. 247] On June 29, 1906, the Act to Regulate Commerce was amended. The fifteenth section of that act as thus amended provides that the Commission, in a proper case, shall have authority, and that it shall be its duty, if in its opinion a given rate is unjust and unreasonable to prescribe a just and reasonable rate which shall not be exceeded by the defendant in the future. Subsequent to the

taking effect of this amendment the complainant filed this petition, praying, in substance, that the Commission proceed in the case to the making of an order under the new fifteenth section. This petition has been served upon the defendants, who have made various answers and objections, all of which come, however, to the proposition that this Commission has no authority to make an order under the new fifteenth section in this proceeding for the reason that such an order can not be entered in a case which was pending when the amendment took effect.

This petition was referred to in the argument by counsel for both the complainant and the defendants as a supplemental petition under section 16a, but it is evident that this provision of the statute has no application. That section is intended to give the Commission the right to rehear a matter for the purpose of correcting any injustice in its previous order. The petition before us alleges no such wrong and asks for no such change. Its only purpose is to secure from the Commission an order under the amended section 15, which could not have been made upon the same state of facts when the original complaint was filed or when the report and opinion of the Commission was first rendered. The sole question for consideration is, Can the Commission make its order under the fifteenth section upon a complaint filed previous to the date when the amended section went into effect? The defendants insist that this amended section confers upon the Commission a new jurisdiction, in that the Commission is given authority to prescribe a rate for the future, and that this new jurisdiction can only be exercised upon a complaint filed subsequent to the time when the jurisdiction was conferred.

The Act to Regulate Commerce has always provided that the rates charged by carriers subject to its provisions should be just and reasonable. In this respect the law stands today precisely-as it has stood from the beginning. Under the act previous to this amendment it was the right of a party to complain that rates were unjust and unreasonable, and it was the duty of the Commission to consider that complaint in precisely the same way that it is now. If it found that the rate was unjust and unreasonable it [fol.248] was its further duty, in passing upon a demand for reparation, to determine by how much that rate had been un-

just in the past. Looking to the future, however, it could only direct the carrier to cease and desist from charging the unreasonable rate. To-day in this later respect it can go further and can fix the rate, which the carrier may not exceed. In other words, the amended act confers upon the Commission power to enforce what has always been a requirement of the statute by the application of a new remedy. In this sense alone can it be said that the amended fifteenth section, as applied to a case like that before us, enlarges the jurisdiction of the Commission.

But if it be true that Congress has thereby conferred upon this body additional jurisdiction, it is clear that in so doing Congress might also prescribe the conditions upon which that jurisdiction should be exercised, and this is explicitly done in the fifteenth section itself. Before the Commission can make an order under that section two conditions must be complied with: first, a formal complaint must have been filed under the thirteenth section; second, there must have been a full hearing of the parties.

In the amendments of June 29 the thirteenth section was in no respect changed. If this complainant were to file to-day its complaint against these rates, that complaint might well be in the precise form of the original complaint in this proceeding, excepting only its prayer for specific relief, which is not essential. We have, therefore, a compliance with the first prerequisite to the exercise of this jurisdiction, in that, in this case, there has been filed a complaint under the thirteenth section.

The second condition precedent is that a full hearing shall be granted. Certainly the hearing upon this record has been sufficiently full. More than six weeks were expended in the taking of testimony, which, as extended, covers several thousand typewritten pages. It would seem that every fact which could have the slightest bearing upon the subject has been elaborated and every consideration dwelt upon.

But it is said that the question now presented is different, from the question presented then; that the question then was, Is the rate charged unreasonable? that the question now is, What will be a reasonable rate for the future?

[fol. 249] It was the duty of the Commission in disposing of this complaint under the former statute to determine

whether the rates charged by the defendants were just and reasonable, and if it found them unjust and unreasonable to determine by how much, in order that reparation might be awarded. It is now necessary to determine by how much these rates are unjust and unreasonable, looking to the future. While this question is, strictly speaking, a new one, and while it is conceivable that the Commission might find that a rate would be reasonable for the future which had been unreasonable in the past, it is probable that the character of the testimony introduced upon the hearing of complaints like that before us in the future will not differ much from what it has been in the past.

But if the fact be otherwise, if the carriers have failed to produce any evidence either because the decision of the Commission was not, in their estimation, of the same importance before as now, or because the issue of fact is different now than formerly, or if conditions have changed since this testimony was taken, their rights in the premises can be and should be amply protected. All the parties, both complainant and defendants, should be allowed to introduce whatever additional testimony they may desire. It is difficult to see why, when such opportunity for further hearing has been given, the second prerequisite to the making of an order under the fifteenth section will not have been fully met. If so, it is not only the right of this body but it becomes its imperative duty under that section to proceed to the making of such an order.

This view is confirmed by a consideration of what would be the consequence of a contrary holding. The fifteenth section was amended by rewriting the section itself. There is to-day no fifteenth section as it existed when this complaint was filed, and there is no provision under which the terms of that section have been continued in force. If, therefore, it should be held that this Commission has no authority to make an order in the case before us under the fifteenth section as it now stands, it must follow that no order of any sort can be made: in other words, that this proceeding has been ended by legislative enactment. When it is remembered that there were pending before this Commission a great number of complaints at the time of this amendment in all stages of advancement, that in many of them large sums of money and much time had been expended in the

taking of testimony, it is incredible that Congress can have [fol. 250] intended to arbitrarily and unnecessarily terminate these suits which had been brought and prosecuted in good faith under the law as it previously stood. Certainly, no interpretation should be given this statute which will produce such a result in the absence of explicit language to that effect.

We think that this case should be set down for further hearing; that both the complainant and the defendants should be allowed to introduce such additional testimony as they may be advised; that thereupon the Commission should justice requires, and that upon this conclusion it should proceed under the fifteenth section, as it now stands, to the making of an order.

At this point it was agreed by and between counsel for interveners and counsel for the defendant, that the Answers prepared on the part of the defendant, copy of which had been sent to opposing counsel, might be considered filed as of November 28th, 1921.

Mr. Murphy: I now offer the report and opinion of the Interstate Commerce Commission in the case of the Cattle Raisers' Association of Texas vs. Missouri, Kansas & Texas Railway Company, et al. No. 723, decided April 14, 1908, 13 I. C. Report, at page 419.

Mr. Miller: Same objection.

Objection overruled.

To which ruling of the Master defendant then and there duly excepted.

Mr. Murphy: In this opinion and report the Commission reaffirms the conclusion rendered in its report and decision of August 16, 1905, in which it was held that the rate was unreasonable and unjust to the extent of the increase of three cents, and that the railroad companies should be required to desist from charging it.

Said paper marked Exhibit 4, and same is in words and figures as follows, to-wit:

[fol. 251]

EXHIBIT 4

No. 732

CATTLE RAISERS' ASSOCIATION OF TEXAS

VS.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al.

Submitted June 28, 1907. Decided April 14, 1908

Report of the Commission

PROUTY, Commissioner:

Between February, 1899, and April, 1903, the defendants made marked advances in their rates upon live stock from breeding pastures of the Southwest north of the quarantine line to northern ranges and from various maturing points west of the Missouri River to the principal markets of consumption. For the purpose of attacking these advances this petition was filed February 10, 1904. A very large amount of testimony was taken during the year 1904; the case was submitted, after elaborate argument, in the spring of 1905, and on August 16, 1905, the Commission filed its report, condemning, generally, the last advance, and holding that previous advances were justifiable, 11 I. C. C. Rep. 296.

Upon the promulgation of that opinion the complainant filed with the Commission an application for more specific findings as to the advances which were condemned, and this petition was under advisement by the Commission in June, 1906, when the last amendments to the Act to Regulate Commerce were adopted. On August 29, 1907, after those amendments had become effective, the complainant filed with the Commission a request that it proceed to the making of an order in the premises under the authority conferred upon it by the amended act. The defendants denied the authority of the Commission to do this, insisting that the case must be disposed of under the provisions of the

act in force when the testimony was taken and the original report filed.

The Commission held that no order could be made by it except as provided under the amended act, but that it was the right of both parties to be further heard before the making of such an order. The case was accordingly set down for further hearing, with notice to both parties that they would be allowed to introduce such additional testimony and to present such additional arguments as they might desire.

Acting under this permission, considerable testimony was introduced by both parties, and the case has been reargued. [fol. 252] Generally speaking, the additional testimony is merely cumulative, although both sides insist that there have been some changes in condition since the former submission of the case which make in their favor.

When the former report was prepared the statute required the Commission to state the findings of fact upon which its conclusions were based, and this was done in the report of August 15, 1906, at considerable length. No question has been raised in these subsequent proceedings as to the correctness of the greater part of these findings, but counsel for the defendants did claim, upon argument, that in certain of them the Commission had fallen into error. We are no longer required to state our findings of fact, but it is our duty to carefully re-examine, in disposing of this case, the entire record, and it seems proper, in this connection, to refer briefly to the criticisms of the defendants upon our former findings.

The first of these, as stated in the brief of the defendant, is that the Commission compared the train loading of live stock with the train loading of trains which contain less than carload freight. This the defendant urges was wrong, for the reason that live stock is uniformly shipped in carloads and that therefore any comparison between that and other freight should be made with carload freight.

Witnesses for the defendants in great number had testified that the average cost of handling all other kinds of freight, including both carload and less than carload, was less than the cost of handling live stock. Mr. Peabody, whose calculations will be later referred to, had presented

very elaborate figures in which he contrasted the cost of transporting live stock with the average cost of transporting all other kinds of freight, carload and less than carload.

For the purpose of estimating the force of this testimony the Commission instituted certain comparisons between the train loading and the train mileage of live stock and other freight. Manifestly, our comparisons to be of value and fair to the complainant must be upon the same basis with those made by the witnesses of the defendants; and since they had embraced both carload and less than carload freight it was incumbent upon us to do the same.

The testimony in this case apparently showed that the average tons of paying freight, in trains consisting either wholly or in part of live stock, was greater than the ton [fol. 253] of paying freight in the average train upon most or all of the lines of the defendants.

It also appeared that the average rate per ton-mile received by most of these defendants for the handling of live stock was greater than the average rate for the handling of all traffic, and usually considerably greater. If the number of tons of paying freight in a live-stock train was greater than the number of tons in the average train, and if the rate per ton-mile applied to the movement of live stock was greater than the average rate applied to the movement of all traffic, it seemed to us then, and it seems, to us still, that this is persuasive evidence that the profitableness of handling live stock as actually handled by these defendants, notwithstanding the many disabilities under which that traffic rests, was above the profitableness arising from the handling of all freight, on the average.

The defendants also claim that the Commission erred in its finding as to the regularity with which this traffic moves.

The carriers had alleged as one of the reasons why the live-stock business was undesirable that its movement was spasmodic and uncertain. The Commission refused to sustain this contention and found, upon the contrary, that live stock moved with great regularity, instantiating as illustrative receipts at Chicago, both of the market as a whole and over individual lines. It is now said that Chicago is not a representative market, and a statement is presented showing the cars of live stock handled into Kansas City by the Atchison System during certain years.

Chicago was selected as being the largest livestock market in the United States. An examination of the figures presented by the Santa Fe apparently indicates that the movement of live stock to Kansas City is not quite as uniform as the movement to Chicago over that line. Eliminating, however, that year when flood conditions at Kansas City practically interrupted all traffic for several weeks, the movement as shown by these statements is still considerably uniform.

What the Commission said in its former report was that while the traffic moved at one season of the year from one locality and at another season from another locality, these different movements counterbalanced each other, so that as applied to the gross systems, which are mainly affected by the preceding, the movement as a whole was considerably regular. With that finding we are entirely satisfied. It is [at this] doubtful whether the Santa Fe System handles any single commodity in large quantities with respect to which the time of its movement and the amount of the movement can be so accurately gauged as in case of live stock.

It is further claimed that our estimate of the relative amount of damages paid for injuries to live stock is, at least, in proportion to the gross receipts derived from the business, is altogether too small. From the testimony of the traffic manager of the Atchafalaya, Papineau & Santa Fe upon the former hearing, we found that the percentage of damages on account of live stock shipments to earnings from such shipments was 1.25 per cent, and we expressed the opinion that this would not be far from the average in case of all the defendants under normal conditions. Various Texas lines now file statements, showing a much larger percentage, and the Santa Fe itself shows that for the year 1906 the percentage in its case was 2.36.

According to the Santa Fe statement, produced upon the former trial, the gross sum paid by that system for such damages for the seven years from June 30, 1900, to June 30, 1906, was \$233,704.86, or \$33,386.36 per year. According to its statement produced upon the last hearing the amount paid during the year 1906 alone was \$132,626.86. This of itself shows that the figures given for the year 1906 do not represent normal conditions upon that system.

As indicated in our former report, the service rendered by certain of these lines in the Southwest has been in recent years extremely poor, and for the last two years this has been even worse than before. Not only have these defendants utterly failed to discharge their duty as common carriers engaged in the shipment of live stock and thus subjected themselves to heavy claims for damages, but this failure upon their part has inflamed public opinion and perhaps led to the institution of more suits and the giving of larger verdicts than otherwise. It is certainly true that many of these Texas lines have actually paid damages much in excess of the percentage found by this Commission, but this seems to be due to local conditions for which the carriers themselves are mainly responsible and in respect of which they are legally at fault. As applied to the defendants as a whole we still think that our former finding sufficiently favorable.

In so far as this traffic is by nature hazardous, the rate for its movement may properly reflect that hazard; but in so far as these damages are due to gross shortage of duty upon the part of the defendants, they can not be allowed to revenge themselves upon the shipping public by a corresponding increase in their charges for transportation.

What is most dwelt upon by the defendants is the treatment accorded the testimony of Mr. Peabody, the statistician of the Atchison System. It was insisted upon the former argument, and is reiterated with great earnestness now, that the figures presented by this witness are a conclusive demonstration against the contention of the complainants. Several particulars are pointed out in which it is said that we either failed to apprehend the position of Mr. Peabody or have not fairly treated his testimony. In view of the earnest insistence by the defendants that the evidence of this witness must control the disposition of this case, it seems proper to refer to it somewhat more in detail than would otherwise be necessary.

What Mr. Peabody has attempted to do was fully stated our former report, and may be briefly indicated here. He takes the operating divisions of the Santa Fe System, over which this traffic mostly moves, and determines the total amount of money expended in the maintenance and opera-

tion of each one of these divisions for a given year. He apportions the total amount between passenger and freight and divides the amount applicable to freight by the total number of tons hauled over the division during the year, including the weight of the car, and determines in this manner the cost of hauling a gross ton.

He then starts with a carload of cattle, the average weight of which can be known with accuracy, and determines the cost of hauling this car over the various divisions by multiplying the number of gross tons by the gross ton cost upon each division, obtaining, in this way, what he styles the "operating cost" of moving this car from its point of origin to destination. To this he adds interest and taxes, distributed upon a car mileage basis, thus obtaining what he terms the "total cost of moving a carload of cattle." In arriving at this cost he assumes that about 90 per cent of stock cars are returned empty, and charges upon the same gross ton basis for this empty haul. He now inquires what revenue his company receives for the handling of this car. If this is more than the total cost he denominates the difference a profit, and if less a deficit.

[fol. 256] Upon the former hearing Mr. Peabody introduced a table showing, upon the above basis, the results of transporting live stock from some twenty or thirty different points, mostly in the State of Texas, to Kansas City, Chicago, and St. Louis. These shipments sometimes showed a profit and sometimes a deficit, as above defined. He added together the profits and the deficits, subtracted the sum of the profits from the sum of the deficits, divided the remainder by the total number of points, and deduced the conclusion that there was a deficit, on the whole of some \$5 per car.

Many of the points thus selected were not upon the line of his system, which received the traffic from its various connections at junction points. In determining the financial result to his company he had taken as the revenue not the rate from the junction point to destination, but the division of the through rate received by the Santa Fe System. For example, the rate from Fort Worth to Kansas City is 36½ cents per 100 pounds, while the division allowed to Santa Fe on business originating at some point beyond Fort

Worth and received by that company at this junction would be perhaps 23 cents per 100 pounds. In determining whether the rate from point of origin was reasonable he considered not the total thorough rate, but the amount which his company received as its division.

The Commission was of the opinion that the contention before it was upon the reasonableness of the rate from the point of origin to destination, and not whether, under stress of competition, the Santa Fe obtained less than its fair share of this rate. It accordingly eliminated from Mr. Peabody's table of points of origin those points not upon the lines of the Santa Fe and proceeded to strike a balance with the remaining points in exactly the same way that Mr. Peabody had struck his balance with the whole. The result then was not a deficit, but a profit of some \$14 per car. It is now insisted that this proceeding upon the part of the Commission was entirely unfair, and Mr. Peabody presents, as a part of his recent testimony, a table of stations entirely on his own line which shows not a profit, but a deficit.

As previously pointed out by the Commission, the whole calculation is practically worthless, and the above statement clearly shows this. Mr. Peabody, by selecting the proper points, can show either a deficit or a profit, as he sees fit. The points which he originally selected showed a profit; those which he now selects a deficit. To be of any [fol. 257] value whatever, his computations should take all points in the territory involved. We are still of the opinion, however, that the fundamental question before us is not whether this traffic is profitable to the Santa Fe System, which may handle it under disadvantageous circumstances, but whether the rates are reasonable.

Some time ago the Texas & Pacific Railway Company canceled all joint through rates upon live stock from points upon its line, and these rates were subsequently re-established by an order of this Commission. It is now suggested that, inasmuch as the Santa Fe System is handling this traffic under compulsion of this order, its divisions of these through rates may properly be considered as they were by Mr. Peabody. In answer to this it should be noted that while the Commission had indeed established joint through

rates in the application of which certain of these divisions are accepted by the Santa Fe System, it has never been asked to establish the divisions themselves, and has never expressed an opinion upon their reasonableness. The Santa Fe accepts its low division from Fort Worth, not under an order of this body, but because, for competitive reasons, it must do so.

In determining the cost of transporting a gross ton of freight over the various divisions of his system, Mr. Peabody must, of necessity, apportion certain expenses, like those of maintenance, in toto, and those of operation, in part between passenger and freight service. The Commission pointed out in its former report that in the early history of this body it had required railways in making their statistical returns to undertake to make an apportionment of this sort, but had later abandoned that requirement at the request of the railways themselves, as not sufficiently reliable to be of much value. Mr. Peabody now undertakes to fortify his method of distributing these expenses by further testimony of his own and by the opinion of expert witnesses.

We did not decline to accept the conclusions of Mr. Peabody because he had found it necessary to make this distribution of expense between freight and passenger service; that was simply pointed out as one of the incidental infirmities in his calculation. The testimony since introduced adds nothing upon that point. This body has just promulgated, under express statutory authority, a uniform system of accounts for use by the various railways of this [fol. 258] country. We have not there required the separation of freight and passenger expenses. Such information would be of great value, but, in the opinion of our own statistician and of the accountants of most railways, it can not be furnished with sufficient accuracy to be of value as statistics. We repeat here what was said before, that such a distribution can have "only the reliability of an estimate."

The real objection to Mr. Peabody's conclusion arises not out of the accuracy of his figures, but from the fundamental errors in his method. What he does is to determine the average cost of handling a gross ton of freight over

certain divisions of his system. In arriving at this result, he must of necessity, consider the movement of all freight of all kinds. With the cost so reached he contrasts the movement of the traffic in question; that is to say, he compares the movement of a car of live stock from Pecos to Chicago, a distance of 1,350 miles, with the movement of all freight of all kinds upon the line between Pecos and Chicago. He charges, for example, against the movement of that carload of cattle the station expenses of all sorts at every station between those points.

It is well understood that the expense of handling short haul is much greater than that of a long haul traffic. Mr. Peabody himself states that the average haul of a carload of livestock upon that system is 281 miles; yet he contrasts with these distances the movement of this carload 1,350 miles.

It is equally well understood that the cost of handling less than carload traffic is very much greater than that of carload business; indeed. It has been said in testimony before this Commission that it is six or seven times as much. About 7 per cent of all the traffic of the Santa Fe is less than carload. It may very likely cost as much to handle this 7 per cent of less than carload business as it does to handle one-fourth of the entire carload traffic, and yet Mr. Peabody charges this carload of live stock from Pecos with all the expense of the less than carload freight.

Mr. Peabody further assumes that this traffic from distant points moving at it does largely in solid train loads, ought to bear a rate which pays the same profit as traffic which moves over short distances. This is not so. It is universally agreed that the rate per ton mile should decrease as the distance increases, not only for the reason that the cost of service decreases, but also because free communication between distant parts of this country can in no other way be had.

[fol. 259] One of the principal sources of apprehension expressed by railroad witnesses before the committees of Congress, when the advisability of conferring upon this Commission the rate-making power was under advisement, was that we should be obliged to adjust rates upon a distance basis. It was earnestly said by railroad representa-

tives that the interstate rates of this country could not be, and ought not to be based on distance. But these defendants are insisting that distance is the proper measure of the reasonableness of a rate, since they insist that long-distance traffic should bear the same proportion of expense as short-distance traffic.

Again, Mr. Peabody of necessity assumes that all kinds of traffic ought to bear the same proportion of expense, since he compares the cost of handling this live-stock business with the cost of moving all freight transported by his system; but it is well understood that the profit made by one commodity need not be, and ought not to be, the same as the profit paid by every other commodity. Undoubtedly, no commodity should be moved at a rate which is less than the cost of the movement; but it can not be said that the rate upon a particular article should yield, if above the cost of movement, any given proportion to the payment of dividends or interest. It will be noted that the amount yielded by these rates, even by the extremely low divisions accepted by the Santa Fe from its connections, in all cases exceeds, by a substantial amount, the cost of operation.

Nothing can be more conclusive against the value of Mr. Peabody's figures than the *reductio ad absurdum*, which results from an application of his method of calculation to a case which it is not intended to fit.

Within the year the rate of the Santa Fe company upon cotton piece goods from Kansas City, Mo., to Wichita, Kans., has been challenged by complaint filed with this Commission. That company contended in that proceeding that this rate was reasonable, and we declined to disturb it.

Mr. Peabody was asked to state what profit, according to his method of computation, his company would derive from the transportation of a carload of 60,000 pounds of cotton piece goods between those points, and has filed a statement showing that the entire cost, including taxes and interest, of operating this car would be \$23.43, while the revenue derived would be \$396. By profit as here used is meant that portion of the entire revenue which remains for [fol. 260] the payment of dividends after every other expense has been satisfied.

It was stated by a witness thoroughly familiar with live-stock rates that the short-distance rates from points in

Kansas to Kansas City were among the lowest to be found in this whole country. An application of Mr. Peabody's calculations to these rates for distances up to 300 miles shows a profit of from 30 to 60 per cent. As already said, the average haul of a carload of live stock upon the Santa Fe is, according to Mr. Peabody, 281 miles. Perry, Okla., is situated 324 miles from Kansas City. The total cost of transporting a carload of cattle from Perry to Kansas City, including the return haul of the empty car and taxes and interest, would be, according to the figures of Mr. Peabody, \$34.83, the revenue \$67.80, leaving a net profit applicable to dividends of \$32.97, or something over 48 per cent.

The taxes and fixed charges upon this shipment are \$10.86 in all. When it is remembered that the bonded debt of the Atchison, Topeka & Santa Fe Railway is some \$28,000 per mile, while its capital stock is but \$22,000 per mile, it will be seen that this ratio of profit would yield an utterly unreasonable dividend.

We do not suggest that the interstate rates upon the Santa Fe System could be or should be adjusted upon the basis adopted by Mr. Peabody, but it does seem manifest that if this method of calculation is to be applied to a portion of its rates it should be extended to the whole. If that system desires to raise its live-stock rates it should correspondingly reduce its merchandise rates. If it proposes to scale up its long-distance rates on live stock, it should scale down, at the same time, the short-distance tariffs applicable to that commodity.

The live-stock rates, by the action of various competitive forces through a long series of years, have become adjusted to other rates. No other commodity is now complaining that the charge against it is too high as compared with that upon live stock. To justify an advance in these rates carriers must either show that they are altogether out of proportion with other rates or that they are in need of greater revenues. We held in deciding this case formerly that the last advances of 1903 were unreasonable, but that former advances had been justifiable. We find nothing in the case as presented now which would alter our conclusion [fol. 261] as of the time when it was reached. There remains, therefore, the further question, Have conditions so changed between 1905 and 1907 that these advances, which were condemned then, should be sanctioned now?

The defendants urge that certain changes have occurred since 1905 which require a modification of the conclusion which we then reached. They urge:

First. That the cattle industry is much more prosperous today than it was then.

Second. That the cost of railroad operation has materially increased since then.

The original complaint sets forth that the cattle industry was extremely depressed, and this was relied upon by the complainant as one of the reasons which should influence us in holding the advances unreasonable. While the Commission fully sustained this claim of the complainant, so far as the fact went, it attached but little importance to it in disposing of the case. We said, at page 348, 11 I. C. C. Rep.:

The depressed condition of this industry has been earnestly pressed upon our attention. We have expressed the opinion elsewhere that freight rates should not of necessity vary with the price of the commodity transported nor with the condition of the business affected. The members of the complainant association cannot require these defendants to make good the depressed state of their industry, but where the rate limits the movement of the traffic, as to some slight extent it does here, that fact is entitled to some consideration, and there is certainly no general prosperity among these shippers in which the defendants are entitled to participate.

It is our impression that the cattle business is somewhat more prosperous today than it was when the case was first submitted. Market prices of beef cattle have materially advanced, but the cost of producing the animal has also increased. In its final analysis the principal item of expense in the raising of cattle is the value of the land upon which the animal grazes and from which it draws in one form and another its subsistence. All land values, especially in the sections covered by these proceedings, have materially increased since 1904, and these advances, together with other increases in cost of labor and various supplies, have added to the expense of producing cattle. The live-stock business as conducted upon the ranges and pastures covered [fol. 262] by this proceeding may be in better shape now

than it was three years ago; but it is not today in what can be termed a state of prosperity. It is true, now, as then, that there is "no general prosperity among these shippers in which the defendants are entitled to participate." We find nothing in the present condition of the live-stock industry which could induce us to modify our former holding.

Comparing April, 1905, when the case was originally submitted, with June, 1907, when the last argument was heard, it is true that the cost of operation has increased. The price of most materials entering into the construction, maintenance, and operation of a railway had somewhat advanced, and material increases in the wages paid railway employees had either actually been made or were in immediate contemplation. It is not certain that today, November, 1907, the price of materials and supplies is greater, if as great, as it was in 1905, and it is not improbable that in the near future these prices may be less. We are not advised what effect, if any, will be produced by the present financial stringency upon the rate of wages paid railway employees. The situation strongly illustrates what this Commission has on several occasions said, that freight rates as a whole should not vary with the price of the commodity carried nor with general business conditions. The railway shares in the general adversity or the general prosperity by loss or gain in the amount of its traffic without change in the rate itself.

It is well settled that, everything else remaining the same, an increase in cost of operation would justify an advance in rates. It is equally well settled that, other things remaining the same, increase in traffic requires a decrease in rates. It may therefore happen that the increase of traffic will more than offset the increase in operating expense, and such has been the fact generally in this country for the last eight years. A table introduced by the complainant, compiled from the returns of various Texas railroads to the railroad commission of that State, forcibly illustrates this. This table, as we understand it, shows, for the eight months ending February 28, 1906, and the corresponding eight months ending February 28, 1907, the gross receipts, the operating expenses, and the net receipts of the various Texas lines. It is not necessary to encumber this report

with the detailed statement, but the summaries may be given, and are:

[fol. 263] Gross receipts for eight months ending February 28, 1906 .....	\$53,640,893 99
Gross receipts for eight months ending February 28, 1907 .....	67,528,212 07

Increase for the eight months .....	13,887,318 08
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Percentage of increase, 0.25 plus.

Operating expenses for eight months ending February 28, 1906 .....	38,550,647 03
Operating expenses for eight months ending February 28, 1907 .....	45,731,315 56

Increase for the eight months .....	7,180,668 53
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Percentage of increase, 0.18 plus.

Income from operation for the eight months ending February 28, 1906 .....	15,090,246 96
Income from operation for the eight months ending February 28, 1907 .....	21,796,896 51

Increase for eight months .....	6,706,649 55
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Percentage of increase, 0.44 plus.

It appears, therefore, that notwithstanding increased expenses of operation these Texas lines show an increase in gross income of over 25 per cent; in operating expenses of over 18 per cent, and in net income of over 44 per cent.

These returns apply to operations in the State of Texas alone, but conditions throughout a large part of the territory embraced in this proceeding are fairly typified by these results in Texas. These defendants are likely to stand in much sorer need of additional revenue during a period of financial depression, accompanied by declining cost of operation than during periods of prosperity while prices of supplies and labor are advancing. An increase of operating cost in sections of the country where no corresponding increase in traffic could be expected might merit

different consideration. (This was written in October, 1907. What has since occurred abundantly justifies the suggestion.)

Certain of the Texas lines have urged upon the Commission with great force their financial necessities. They show that in order to properly transact the business offered extensive outlays must be made upon their properties; that under the laws of the State of Texas they can make no further issue of stock or bonds; that the money for these expenditures can only be obtained from current revenue, and they insist that their rates should be such as will provide the necessary revenue out of which to improve their properties.

[fol. 264] The Texas stock and bond law requires the railroad commission of that State to value the various railroad properties in the State, and provides that the combined issue of stocks and bonds shall not exceed this valuation.

Many, and perhaps most, of these Texas lines were cheaply constructed at the outset and were bonded for more than the cost of construction. When, therefore, the commission of Texas valued these railroads upon the basis of cost of reproduction, as it did, the values thus fixed fell, in most cases, far below the outstanding issues of stocks and bonds.

The original cheap construction of these Texas lines answered fairly well for the movement of the lighter traffic handled at the time they were built, but today, under the enormous increase in business which has taken place, that construction is entirely inadequate. Most of these lines have been improved to a considerable extent, and some of them have been put into shape to meet the requirements of the present, but many of them must be virtually reconstructed in the immediate future. They must be regraded, laid with heavier steel, ballasted, and re-equipped, if their business is to be transacted upon a reasonable rate at a reasonable profit. Since the roads, even after all these improvements are made, will still be, if valued upon basis of the cost of reproduction, worth less than the present issue of stocks and bonds, it follows that no funds can be provided for these improvements by the issue of additional securities, and that money must be obtained either by carrying the

loan as an unsecured indebtedness or from revenue. Some of these Texas lines have strong parent companies outside the State which can supply their necessities, but the above statement applies to many of the more important Texas railroads.

While this condition is a most unfortunate one, we cannot believe that it affords a sufficient ground for the establishment of rates by this Commission which would otherwise be unjust and unreasonable. It will hardly be claimed by anyone that these railroads at the beginning should have been allowed to impose upon the public rates sufficient to repay, within a few years, the original cost of construction, and there is no better reason for saying that they should be allowed now to impose rates which will pay, out of current earnings, this cost of reconstruction made necessary by the increase in their business. Any outlay which is not required to keep the property good, or, perhaps, more accurately stated, to keep the property up to present standards, but which is necessary to provide for the handling of increased business, and which, therefore, adds to the permanent earning capacity of the property, should, as between the railway and the public, when the railway demands the right to increase a rate for the mere sake of additional revenue, be made not out of earnings but out of capital or surplus. Such has been the frequent holding of this Commission and that holding has been explicitly affirmed by the Supreme Court of the United States in a recent decision. *Illinois Central R. R. Co. et al. vs. Interstate Commerce Commission*, 206 U. S. 441, 51 L. ed. 1128, 27 Sup. Ct. Rep. 700.

The Commission had found in that case that extensive permanent improvements had been paid for as a part of operating expenses out of current earnings and had expressed the opinion that such expenditures should not be charged against a single year, but "should be, so far as practicable and so far as rates exacted from the public are concerned, projected proportionately over the future." The appellant railway companies argued that this was clearly error upon the part of the Commission. The court held otherwise, using, at page 462 of the opinion, this language:

\* \* \* The findings show that the old rates were profitable and that dividends were declared even when permanent improvements and equipment were charged to operating expenses. But may they be so charged? Appellants contend that the answer should be so obviously in the affirmative that it should be made an axiom in transportation. On principle it would seem as if the answer should be otherwise. It would seem as if expenditures for additions to construction and equipment, as expenditures for original construction and equipment, should be reimbursed by all of the traffic they accommodate during the period of their duration, and that improvements that will last many years should not be charged wholly against the revenue of a single year. \* \* \*

The court then proceeded to discuss and distinguish *Union Pacific Railroad Co. vs. United States*, 99 U. S. 402, 25 L. ed. 274, and concluded its discussion with these words:

\* \* \* But such is not the relation or concern of a shipper of lumber. His right is immediate. He may demand a service. He must pay a toll, but a toll measured by the reasonable value of the service. The elements of that value may be many and complex, not always determinable, as we have seen, with mathematical accuracy, but we think it is clear that instrumentalities which are to be used for years should not be paid for by the revenues of a day or year; and this is the principle of returns upon capital which exists in durable shape.

[fol. 266] The situation presented by these Texas roads might afford a very good reason for allowing new securities to be issued against the money which actually goes into the improvement of these properties; it is not a reason for an unreasonable transportation charge; nor, even if this were not so, would it be just to the public to allow the necessities of these few Texas roads to impose upon the entire community a burden which, with respect to the great majority of the lines and the greater part of the traffic involved, would be unjust and unreasonable.

It is our opinion, therefore, that the advances shown in the appendix to our former report, which is referred to and made a part of this report, which were effected by the defendants during the year 1903, were unjust and unreason-

able; that the present rates produced by those advances are unjust and unreasonable; that the rates in effect previous to said advances would be just and reasonable and ought not to be exceeded for the future.

It will be seen by reference to this appendix that the advances thus condemned are but a small part of the total advances made during the years 1898-1903, inclusive.

On June 1, 1894, railways entering the city of Chicago imposed a terminal charge of \$2 per car for the delivery of earloads of live stock at the Union Stock Yards. This complaint alleges that the imposition of that terminal charge, which is still in effect, is unjust, unreasonable, and discriminatory, and asks that the same be abolished.

The lawfulness of that charge has been the subject of extensive litigation before this Commission in the past, and we may refer to the various reports touching that subject without attempting to repeat here the facts involved. *Cattle Raisers Asso. of Texas et al. vs. Fort Worth & Denver City Ry. Co. et al.*, 7 I. C. C. Rep. 513; *ibid.*, 7 I. C. C. Rep. 555a; *Cattle Raisers Asso. of Texas et al. vs. Chicago, Burlington & Quincy Railroad Co. et al.*, 10 I. C. C. Rep. 83; *ibid.*, 11 I. C. C. Rep. 277; *ibid.*, 12 I. C. C. Rep. 507.

The stock yards at Chicago are owned by the Union Stock Yards & Transit Co. which also owns the tracks connecting the lines of the various railways entering Chicago with the stock yards. Previous to June 1, 1894, the Stock Yards & Transit Co. had allowed the various railways to operate their trains of live stock over its tracks to the stock yards without payment of other compensation than an unloading charge of 25 cents per car; but beginning June 1, 1894, they imposed for the use of these tracks a trackage charge which [fol. 267] varied, in different cases, according to the length of the haul, from 80 cents to \$1.50 per car. Thereupon the railways imposed the \$2 terminal charge.

The Commission held that previous to June 1, 1894, rates on live stock to Chicago had included a delivery at the stock yards; that these rates were sufficiently high, and that the cost of this service had been in no way increased on June 1, 1894, except by the imposition of this trackage charge. We therefore concluded that the imposition of that charge was unjust and unreasonable, except in so far

as it was justified by the trackage charge then first made by the Stock Yards & Transit Co., and we allowed, for reasons stated in the original opinion, the imposition of a uniform charge of \$1 by all the defendants.

If the reductions ordered in this case are made the rates thus established will still be, from all the territory involved, higher—in many cases materially higher—than they were on June 1, 1894, and immediately previous thereto. We are of the opinion that if these reductions are made the rates thus established will be sufficiently high to include a delivery at the stock yards, and that no terminal charge in addition to the rates so fixed should be allowed in excess of \$1 per car.

After the making of its order by the Commission in the original case, directing that the terminal charge should not exceed \$1, a petition was filed in the circuit court, on the part of the Commission, to enforce obedience to that order, and this proceeding came by appeal into the Supreme Court of the United States. It appeared in the report of the Commission, which was before the Supreme Court in that proceeding, that subsequent to June 1, 1894, rates from certain sections in the Southwest to Chicago had been reduced by the amount of 5 cents per 100 pounds, or from \$10 to \$12 per car. This left the total rate from those points to Chicago less than it was before the imposition of the \$2 charge, and since there was nothing to show why this reduction had been made the Supreme Court was of the opinion that it must be assumed, in the absence of such testimony, that the total rate, including the terminal charge, was after this reduction, reasonable, and therefore that the terminal charge might be properly imposed upon shipments from that territory to which the 5-cent reduction applied. Since, further, the report of the Commission did not define that territory the court held that the order of the Commission by reason of this indefiniteness could not be enforced in any part, and dismissed the petition of the Commission without prejudice as to the territory not covered by the 5-cent reduction.

The defendants claim that with respect to the territory covered by the 5-cent reduction this terminal charge has become *res judicata* by this decision of the Supreme Court and that the Commission can no longer examine that ques-

tion with respect to this territory. While we hold otherwise, since the advances made since the decision of the Supreme Court have more than offset the reduction of 5 cents, it seems proper to define that territory in order that the court, should it be of a different opinion, may modify our order or remand the case to the Commission for the purpose of doing so upon its present record. That territory was as follows:

The entire State of Texas north and west of the Galveston, Harrisburg & San Antonio Railway and the Houston, East & West Texas Railway, including stations on the former and excluding those on the latter; also all stations in Indian Territory and Oklahoma Territory upon the Missouri, Kansas & Texas Railway, the Rock Island System, including the St. Louis & San Francisco Railroad, and the Atchison System.

It should be carefully noted that this is not a reduction in rates, but the condemnation of an advance, and that the advance which we condemn was not a first nor even a second, but a third advance made within the period of three years. It should be further noted that the rates which we leave in effect are higher than these carriers had maintained save for a single month from the time tariffs were first filed with this Commission down to the date of the advance.

These advances were made during the year 1903 and were generally 3 cents per 100 pounds. In a few cases they were as high as 5 cents and as low as one-half cent. It is evident that in such instances it was the purpose of the carriers to change the relation in rates. Presumably the old relation was wrong in the opinion of the carriers and the present relation is right. If we were simply to order a reduction to the original basis the present relation would be disturbed in these instances, and yet we cannot well make any different order, since these rates have not been specially referred to. The better way seems therefore, to be to allow the carriers sufficient time within which to put in rates in substantial accord with this report, and the making of an order will therefore be postponed until July 1, 1908.

[fol. 269] Questions as to reparation are reserved and will be dealt with as specific claims are presented. It is proper to state here, however, that we have decided that no

reparation can be allowed upon claims accruing prior to August 29, 1906, when the complain-t filed its petition with the Commission to proceed under the amended act.

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Mr. Murphy: I now offer the unreported opinion No. A-583 of the Interstate Commerce Commission in Case No. 732, Cattle Raisers' Association of Texas vs. Missouri, Kansas & Texas Railway Company, et al., decided January 12, 1914.

Same objection and same ruling. To which ruling of the Master the defendant then and there duly excepted.

Said paper was marked Exhibit 5 and is in words and figures as follows, to-wit:

EXHIBIT 5—11-29-21. D. J. F.

INTERSTATE COMMERCE COMMISSION

No. 732

CATTLE RAISERS' ASSOCIATION OF TEXAS

VS.

MISSOURI, KANSAS & TEXAS RAILROAD COMPANY et al.

Filed August 15, 1923. Decided January 12, 1914

Supplemental Report of the Commission

PROUTY, Commissioner:

The Commission, in its former report in this case, 13 I. C. C., 418, 435, stated that reparation would be awarded from August 29, 1906. Claims for reparation were filed with the Commission covering shipments both before and after this date, but no claims are embraced in this report where delivery was made previous to the date above given.

These claims, as filed with the Commission, describe in detail the shipments on account of which reparation is claimed, stating the point of origin and the point of delivery and the carrier making the delivery. By the direction

of the Commission, a list of the cars with respect to which claims have been filed was furnished to each one of these delivering lines, which was requested by the Commission to check the claims against their records with a view to ascer-[fol. 270] taining how many of the cars moved as appeared from the records of the defendants. These claims have been checked by these delivering roads, and no earloads are embraced in this report which did not appear from the records of the defendants to have moved as stated.

In all cases in this report the point of origin, the point of delivery, and the delivering road are named. The complainant has no way of determining the originating carrier, where the point of origin is served by two or more carriers, nor the intermediate carrier, where such a carrier participated in the transportation.

These shipments of live stock were in all cases consigned to some person at the delivering market, usually a commission firm. The consignor paid the freight in the first instance to the delivering carrier in all cases. Subsequently the cattle were sold upon the market and the amount of the freight deducted from the purchase price, remittance being made for the balance. In all cases, therefore, the owner and shipper of the cattle finally paid the transportation charges.

The table attached to and made a part of this report, as Appendix A, shows with reference to all shipments whose movement was admitted by the defendants the point of origin, the point and road of delivery, the rate of freight which was paid, the rate which should have been paid, and the difference between the amount of freight which was paid and the amount which should have been paid. In some cases the weight of the shipment did not appear, and in all such instances the minimum carload has been applied, since under their tariffs, the carriers must have collected at least upon the minimum.

Referring to Appendix "A," we find that the persons named in the column marked "consignor" shipped from the points named in the column marked "origin" to points named in the column marked "destination," by the line of road named as the "delivering road," the number of cars specified in the column headed "number of cars," of the aggregate net weight stated in the column marked "weight." We further find that said shippers paid to said

delivering carriers freight upon these shipments at the rate which is named in the column headed "rate paid." We find that this rate was unreasonable and excessive and that a reasonable rate to have been charged on the several shipments at the time they were made would have been that rate named in the column marked "rate ordered," which was subsequently established by the Commission, and that therefore the said delivering carriers collected from the [fol. 271] said shippers unreasonable charges on account of the shipments by the amount named in the column headed "amount of refund." We further find that by these unreasonable exactions of the said carriers the said shippers were damaged in the amounts stated in said last-named column, since they received for their cattle less by those amounts than they would have received had the rate found reasonable been charged, and that said shippers are entitled to reparation in the amounts so specified, with interest from the date of the delivery of the shipment at 6 per cent, which said interest has been computed and is stated in the column marked "interest."

In case of certain of the above claims the shipper made an assignment to H. E. Crowley, at that time secretary of the Cattle Raisers' Association. The form of this assignment was the same in all cases, and was as follows:

In consideration of One Dollar to me in hand paid by H. E. Crowley, Secretary, as well as other considerations good and valuable to me, I hereby transfer and assign to him absolutely, any and all right of action, claims, or demands which I now have, or may hereafter have, against each and every Railway Company over whose railroad I have shipped any cattle, for reparation or reimbursements on account of any excessive, unreasonable, discriminatory, or otherwise unlawful or unjust freight rates or other charges which I have paid to such railway company on such shipments, as per schedule of said shipments hereto attached.

Having assigned my said claim as aforesaid, I also delegate to said H. E. Crowley, Secretary, full authority in establishing said claim to collect data and evidence in relation thereto from all Commission Companies, persons

or firms as if I were personally present and acting in the premises.

Witness my signature hereto.

Sign here: — — —.

Post Office address: — — —.

We find that this assignment was made by the shipper in all cases where, in Appendix "A," the name of such shipper is followed by the letter "C." Subsequently Crowley ceased to be secretary of the Cattle Raisers' Association and was succeeded by E. B. Spiller, and thereafter the shipper [fol. 272] assigned certain other claims to Spiller. The form of assignment used was in all cases the same as that which had formerly been employed in making the assignment to Crowley. We find that those shippers whose names are followed by the letter "S" made assignments in this manner to Spiller.

After Crowley ceased to be secretary of the Cattle Raisers' Association he assigned all claims which had previously been assigned to him to his successor, Spiller, by assignment in due form, so that Spiller now has whatever right and title Crowley originally took under the assignments to him.

The attorney for the complainants contended that all claims assigned to Spiller directly, or to Crowley and by him to Spiller as above, were so vested in Spiller that he was entitled to demand and receive payment of the amount of reparation due from the defendants, and that the order of reparation should be made in his favor. Upon the request of the attorney of the complainants the Commission orders payment of reparation to E. B. Spiller in all cases where such assignments were made as indicated in the appendix aforesaid. Where no assignment has been made the order will run directly in favor of the owner as shown by said appendix.

All the claims mentioned in the above appendix, with respect to which reparation is allowed, were filed with the Commission within less than two years from the date when the shipment was delivered to the consignee by the delivering road.

An order will be entered accordingly.

(Pages 4 to 62 omitted as same are identical with exhibit attached to intervening petition of E. B. Spiller heretofore set out.)

### Order

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 12TH DAY OF JANUARY, A. D. 1914

No. 732

CATTLE RAISERS' ASSOCIATION OF TEXAS

vs.

MISSOURI, KANSAS & TEXS RAILWAY COMPANY et al.

This case coming on to be further heard upon prayer for reparation, and having been duly submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date herof, made and filed a supplemental report containing its [fol. 273] findings of fact and conclusions thereon, which said supplemental report is hereby referred to and made a part thereof:

It is ordered and directed that The Atchison, Topeka & Santa Fe Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Atchison, Topeka & Santa Fe Railway Company as therein shown, being in the aggregate the sum of \$27,832.60 principal and \$10,459.42 interest.

It is further ordered and directed, that the Chicago & Eastern Illinois Railroad Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Chicago & Eastern Illinois Railroad Company as therein shown, being in the aggregate the sum of \$1,360.02 principal and \$470.47 interest.

It is further ordered and directed that The Chicago & Alton Railroad Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Chicago & Alton Railroad Company as therein shown, being in the aggregate the sum of \$572.79 principal and \$189.70 interest.

It is further ordered and directed that The Chicago, Rock Island & Pacific Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Chicago, Rock Island & Pacific Railway Company as therein shown, being in the aggregate the sum of \$13,218.16 principal and \$4,821.81 interest.

It is further ordered and directed that the Illinois Central Railroad Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments [fol. 274] named in said report in case of which the freight money was paid to the said Illinois Central Railroad Company as therein shown, being in the aggregate the sum of \$1,536.93 principal and \$592.03 interest.

It is further ordered and directed that the Missouri, Kansas & Texas Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Missouri, Kansas & Texas Railway Company as therein shown, being in the aggregate the sum of \$39,777.74 principal and \$15,002.17 interest.

It is further ordered and directed that The Missouri Pacific Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Missouri Pacific Railway Company as therein

shown, being in the aggregate the sum of \$224.81 principal and \$86.15 interest.

It is further ordered and directed that the St. Louis, Iron Mountain & Southern Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said St. Louis, Iron Mountain & Southern Railway Company as therein shown, being in the aggregate the sum of \$2,736.35 principal and \$958.51 interest.

It is further ordered and directed that the St. Louis & San Francisco Railroad Company, on or before June 15, 1914 pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said St. Louis & San Francisco Railroad Company as therein shown, being in the aggregate the sum of \$20,211.95 principal and \$7,470.80 interest.

It is further ordered and directed that The Texas & Pacific Railway Company, on or before June 15, 1914, pay to E. B. Spiller the amounts to which the said Spiller, as assignee, is entitled as reparation and interest thereon under the said report with respect to the several shipments named in said report in case of which the freight money was paid to the said Texas & Pacific Railway Company, as therein shown, being in the aggregate the sum of \$231 principal and \$97.94 interest.

It is further ordered and directed that The Atchison, Topeka & Santa Fe Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Atchison Topeka & Santa Fe Railway Company.

It is further ordered and directed that the Chicago & Eastern Illinois Railroad Company, on or before June 15,

1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the Chicago & Eastern Illinois Railroad Company.

It is further ordered and directed that The Chicago & Alton Railroad Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Chicago & Alton Railroad Company.

It is further ordered and directed that The Chicago, Rock Island Pacific Railway Company, on or about June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments [fol. 276] in case of which the freight money was paid by said consignor to The Chicago, Rock Island & Pacific Railway Company.

It is further ordered and directed that the Illinois Central Railroad Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the Illinois Central Railroad Company.

It is further ordered and directed that the Missouri, Kansas & Texas Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said re-

port whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the Missouri, Kansas & Texas Railway Company.

It is further ordered and directed that The Missouri Pacific Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Missouri Pacific Railway Company.

It is further ordered and directed that the St. Louis, Iron Mountain & Southern Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the St. Louis, Iron Mountain & Southern Railway Company.

[fol. 277] It is further ordered and directed that the St. Louis & San Francisco Railroad Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to the St. Louis & San Francisco Railroad Company.

And it is further ordered and directed that The Texas & Pacific Railway Company, on or before June 15, 1914, pay to each of the persons named as consignor in said report

whose claims have not been assigned to E. B. Spiller or to H. E. Crowley, and by him to E. B. Spiller, as appears from the said report, the amount of reparation and interest thereon to which said consignor is entitled, according to the terms of said report, with respect to all those shipments in case of which the freight money was paid by said consignor to The Texas & Pacific Railway Company.

By the Commission.

George B. McGinty, Secretary. (Seal.)

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Mr. Murphy: I now offer the petition of E. B. Spiller, plaintiff, vs. Missouri, Kansas & Texas Railway Company, et al., No. 4308, filed on December 29, 1914, in the District Court of the United States for the Western Division of the Western District of Missouri. Copy of that petition is found on pages 20-21-22-23-24-25-26- and 27 of the abstract of the record filed in the Supreme Court of the United States in an appeal from the Circuit Court of Appeals of the Eighth Circuit.

Mr. Miller: That is objected to for the same reason.

Objection overruled.

To which ruling of the Master the defendant then and there duly excepted.

Mr. Miller: Are you going to leave that document here as an exhibit, Mr. Murphy? Any documents that you introduce that you do not leave copies of here, in the event of an appeal I think that the parties who introduce them should supply the record.

[fol. 278] Mr. Murphy: Yes.

Mr. Miller: And I don't ask that you leave those, because I can probably find them myself.

Said document was marked Exhibit 6, same being in words and figures as follows, to-wit:

EXHIBIT 6—Filed August 15, 1923. Jas. J. O'Connor,  
Clerk

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
WESTERN DISTRICT OF MISSOURI, AT KANSAS CITY

No. 4308

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al.,  
Defendant-

Cowan & Burney, Forth Worth Texas: Deattherage &  
Creason, Kansas City, Mo., attorneys for plaintiff.

Plaintiff's Original Petition

To the Honorable Judge of said Court:

# I

E. B. Spiller, plaintiff, who resides in Tarrant County, in the Northern District of Texas, at Fort Worth, complaining of the defendants, Missouri, Kansas & Texas Railway Company, the Missouri Pacific Railway Company, the St. Louis & San Francisco Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago, Rock Island [Island] & Pacific Railway Company and the Chicago & Alton Railway Company, each of which own and operate their line of railway through the Western District of Missouri and have principal operating offices in said District at Kansas City, Missouri; and the St. Louis Iron Mountain & Southern Railway Company, the Chicago & East Illinois Railway Company and the Illinois Central Railroad Company, which have offices and agents at Kansas City, Missouri; and the Texas & Pacific Railway Company, which has its principal office and agents at Dallas, in Dallas County, Texas, represents:

[fol. 279]

## II

That the defendants are now and at the dates herein named were common carriers engaged in the transportation of cattle in connection with other lines of railway from points in Texas, Oklahoma and New Mexico to Kansas City and St. Joseph, Missouri, St. Louis, Missouri, National Stock Yards and Chicago, Illinois, New Orleans, Louisiana and to other live stock markets, and were parties to the tariffs of rates, fares and charges constituting joint rates and through routes from the points named in Appendix A to the order of the Interstate Commerce Commission herein referred to and made a part hereof, as Exhibit to this petition, as the rates of shipments shown in said Appendix A.

## III

That on the 12th day of January, 1914, the Interstate Commerce Commission, after full hearing and in all things proceeding legally, in the cause pending before it, being No. 732, Cattle Raisers Association of Texas et al. vs. Missouri, Kansas & Texas Railway Company et al., in which all of the defendants herein were parties, made its lawful order directing the defendants and each of the carriers named in said order to pay to the plaintiff damages on account of charging said shippers named as consignors in said report and order unjust and unreasonable rates on shipments of cattle shown in said Appendix A in the amounts therein named, said report and order of the Commission being Unreported Opinion No. A-583 hereto attached and made a part hereof as Exhibit A in which the unreasonable rates paid, the rates established by the Commission, the shipments made for which the unreasonable rates were paid, the amount of principal and interest as damages which the defendant- [were] directed severally to pay to plaintiff, are fully set out in connection with the findings in said Supplemental Report and order of the Commission, and in which amounts the shippers named as consignors, who assigned their claims to plaintiff, as therein shown, were damaged by the defendant- and said carriers respectively as found by the Commission, and which the plaintiff as assignee as

stated in said report of the Commission is entitled to recover of said carriers defendants respectively as follows:

	Principal	Interest
[fol. 280] Atchison, Topeka & Santa Fe Ry. Co. ....	\$27,832 60	\$10,459 42
Chicago & Eastern Illinois R. R. Co. ....	1,360 02	470 47
Chicago & Alton Railroad Co. ....	572 79	189 70
Chicago, Rock Island & Pacific Ry. Co. ....	13,218 16	4,821 81
Illinois Central Railroad Co. ....	1,536 93	592 03
Missouri, Kansas & Texas Ry. Co. ....	39,777 74	15,002 17
Missouri Pacific Railway Co. ....	224 81	86 15
St. Louis & San Francisco R. R. Co. ....	20,211 95	7,470 80
St. Louis, Iron Mountain & Southern Ry. ....	2,736 35	958 51
Texas & Pacific Railway Co. ....	231 00	97 94

The detailed claims and amounts sued for herein being for and on account of the shipments made and freight paid to the defendants, — — —, by said consignors named in said order and appendix thereto, where the name of the consignor is followed by the letter S. and those followed by the letter C and also under which the abbreviation of the word ditto is used (Do.), meaning a repetition of the preceding line, name and letter indicating to whom the assignment was made as shown by said Report and order of the Commission and explained by notation on page 5 of the Appendix thereto, to recover each and all of which claims and interest the plaintiff sues the defendants in the amounts which the Commission Ordered the defendants to pay as shown by said report and Order.

#### IV

That the damages so claimed grew out of the fact that in the year 1903, the defendants and other Railway Companies in said cause 732 and their connecting carriers being engaged in the business of transporting cattle from said points of origin mentioned in said Appendix A to the markets of destinations as shown in said Appendix, on or about March, 1903, advanced the rates for transporting

cattle from said points of origin named in said Appendix A, and from other points, to Kansas City, St. Joseph and St. Louis, Missouri; National Stock Yards and Chicago, Illinois; New Orleans, Louisiana and other points, the amount of the advance applicable to shipments therein specified being the difference between the rates shown in the column of Appendix A marked "Rate paid" and in the column marked "Rate ordered," which "Rate paid" named in said Appendix A the shippers named as consignors in said list were compelled severally to pay to the said carriers respectively as shown in said Appendix A on the shipments which they respectively made, as therein [fol. 281] shown, which advanced rates were found by the Commission to be unjust and unreasonable, and on account of the payment of which on the said shipments, said carriers were ordered and directed to pay the said principal sum and interest to plaintiff as assignee of the said shippers named as consignors, as shown in said report and order of the Commission, Exhibit A hereto.

That after said rates were advanced and on February 10, 1904, the Cattle Raisers Association of Texas, a voluntary organization of live stock producers and shippers of Texas, Oklahoma and New Mexico, brought its complaint before the Interstate Commerce Commission against the said carriers and other carriers and their connecting lines of railway which had established said rates, alleging that said advanced rates were unjust and unreasonable, and the Commission, after full hearing of said complaint, in accordance with the Act to Regulate Commerce, on August 16, 1905, by its report and opinion in Cause No. 732, Cattle Raisers Association of Texas et al. vs. M. K. & T. Ry. Co. et al., reported in 11 I. C. C. 298, found it to be a fact that said advanced rates were unjust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce, as shown by the report of the Commission in said cause last above referred to, which report and opinion as published by the Interstate Commerce Commission is hereby referred to, and plaintiff asks that it be considered a part hereof. That said advanced rates, notwithstanding the said decision of the Commission, remained in effect until November 17, 1908. That while the Commission found, as shown in its

report and opinion, that the said rates on cattle were advanced as aforesaid, and the advances thereof were unjust and unreasonable, no formal order was made by the Commission consequent upon its said report and opinion, because the complainant, the Cattle Raisers Association, upon the promulgation of that report and opinion, made application to the Commission for more specific findings of fact, which application had not been decided or disposed of, but held under advisement by the Commission until the Act to Regulate Commerce was amended by what is known as the Hepburn law, effective August 28, 1906, and which application for more specific findings of fact was still pending before the Commission on August 29, 1906.

That on August 29, 1906, the complainant in behalf of itself and its members and others similarly situated who were engaged in the business of raising, buying and shipping cattle from the states of Texas, Oklahoma and New [fol. 282] Mexico and Colorado over said lines of railway, to the markets shown as points of destination in said Appendix A hereinbefore referred to, filed in its petition with the Interstate Commerce Commission reaffirming its previous allegations of its petition filed with the Commission February 1, 1904, charging that the rates on cattle from the points hereinbefore mentioned to the destinations mentioned, and the advances in said rates, and the rates as advanced, were unjust and unreasonable, and praying that the Commission should proceed with such further hearing as it might deem necessary with respect to the allegations that the said rates were unjust and unreasonable, and for an order of the Interstate Commerce Commission prescribing the just and reasonable rates and praying for an order of reparation against the defendants respectively on behalf of the members of the Cattle Raisers Association of Texas, as shippers, and others similarly situated, for their respective damages accruing by reason of the payment of said unjust and unreasonable rates.

That thereupon the Interstate Commerce Commission, after answers duly filed by all the said defendants herein and their connecting carriers, proceeded to a full hearing of the matters contained in said petition, and after such full hearing as provided by law, the Interstate Commerce Commission on April 14, 1908, by its Report and Opinion, 13

I. C. C. 419, in said cause, found that said rates as advanced and the advances of said rates were unjust and unreasonable, as found in the previous opinion of the Commission as above referred to, reported in 11 I. C. C. 298, the finding of the Commission in its said report of April 14, 1908, being in part as follows:

"It is our opinion, therefore, that the advances shown in the appendix to our former report, which is referred to and made a part of this report, which were effected by the defendants during the year 1903, were unjust and unreasonable; that the present rates produced by those advances are unjust and unreasonable; that the rates in effect previous to said advance would be just and reasonable and ought not to be exceeded for the future."

The report and opinion of the Interstate Commerce Commission as shown by the official report in said cause, 13 I. C. C. 419, is here referred to and complainant asks that the same be taken as a part hereof. That in said report and opinion the Commission reserved for further consideration the matter of reparation when the specific claims thereafter should be presented.

[fol. 283] That the Commission, in its last named report, and by supplemental order in said cause, prescribed and fixed the reasonable rates for shipments of cattle from the points of origin named in said Appendix A hereinbefore referred to, to the destinations therein named, being the same rates designated therein as "rate ordered," which became effective November 17, 1908.

## V

That the said parties named as consignors in said Appendix A above referred to, being the owners thereof, shipped the carloads of cattle as therein shown, from the points to the destinations shown in said Appendix A and paid to defendants respectively the rate of freight named in the column marked "Rate paid," which rates as aforesaid were held by the Commission to be unjust, unreasonable and unlawful at the dates of said shipments, in the amounts as named in said Appendix A and that said owners as shippers and consignors were thereby damaged by defendants respectively in the amount of the unjust and unreasonable

part of the rates as shown by the difference between "Rate paid" and "Rate ordered," as shown in Appendix A.

The rate paid was as aforesaid found by the Commission to be unjust and unreasonable and the rate ordered was found to be the just and reasonable rate applicable to such shipment, when made.

## VI

And plaintiff alleges that the facts as found by the Commission in said reports and opinion are true and correct. That said shippers named in said Appendix as consignors, and E. B. Spiller, as secretary of the Cattle Raisers Association of Texas, and his predecessor in office, H. E. Cowley, in due time and in accordance with law, filed and caused to be filed with the Interstate Commerce Commission for and on account of the shippers named as consignors, and on account of said Spiller and Crowley as assignees for and on account of said shipments and freight paid, their petitions and claims for reparation for the amount of said unlawful charges which the Commission by its said report and order of January 12, 1914, Exhibit A hereto, directed the defendant to pay. That the said claims and the rights of the said owners as shippers and consignors as aforesaid were duly and legally assigned to E. B. Spiller, as shown in the report and order of the Commission, Exhibit A hereof, so that he [fol. 284] became and was, at the date of said order, and now is, the legal and equitable owner and holder thereof and entitled to have and recover the damages resulting to said shippers by reason of the premises, and as such was entitled to have the order of the Interstate [Com-erce] Commission as aforesaid ordering and directing the said carriers in said cause to pay said principal and interest, together with interest thereon, and is entitled to recover the same, together with interest and attorneys' fees provided by law.

That the said order of the Interstate Commerce Commission, Exhibit A hereof, directing the railroads therein named to pay the aforesaid damages as therein shown, was duly served upon each of the railway companies, defendants herein, but though often requested that said defendants have failed and refused and still fail and refuse to pay the same or any part thereof, and are therefore severally liable

to the plaintiff in the full amount of said damages, principal, interest and attorneys' fees.

## VII

Wherefore, premises considered, the plaintiff prays for citation in due form and on final hearing for judgment for the aforesaid damages, interest, costs and attorneys' fees, and in duty bound will ever pray.

### Second Count

And the plaintiff, E. B. Spiller, reaffirming and adopting the foregoing allegations, and adopting Exhibit A thereto as Exhibit A to this court, and making reference to the said allegations and Exhibit as a part of this count of this petition, and complaining of the said defendants and for cause of action against them jointly and severally and suing for treble damages under the anti-trust laws of the United States, to-wit, 26 Statute- at Large 209-210, Act of July 2, 1890, and 28 Statute- at Large 570, further alleges:

The Missouri, Kansas & Texas Railway Company, the Missouri Pacific Railway Company, the St. Louis & San Francisco Railway Company, the Atchison. Topeka & Santa Fe Railway Company, the Chicago, Rosk Island & Pacific Railway Company, and the Chicago & Alton Railway Company, each of which own and operate their line of railway through the Western District of Missouri, and have principal operating offices in said District at Kansas City, Missouri; and the St. Louis, Iron Mountain & Southern Railway Company, the Chicago & East Illinois Railway Company, and the Illinois Central Railroad Company, which have offices and agents at Kansas City, Missouri; [fol. 285] and the Texas & Pacific Railway Company, which has its principal office and agents at Dallas, in Dallas County, Texas. That as hereinafter alleged, all of said parties were acting together in the combination and conspiracy herein alleged, in restraint of interstate commerce.

That on or about March 3, 1905, the aforesaid defendants in combination and conspiracy with each other and with their connecting carriers operating in connection with defendants and other railroads in the States of Texas,

Oklahoma, New Mexico and Colorado, hereinafter named, transporting cattle to the live stock markets at Kansas City, Missouri, St. Joseph, Missouri, Omaha, Nebraska, National Stock Yards Illinois, Chicago, Illinois and Orleans, Louisiana, as interstate commerce from the points named in Appendix A to the Supplemental Report of the Commission attached hereto as exhibit A, as points of origin, to the points named therein as points of destination of the shipments referred to, made, put into effect and maintained the unjust and unreasonable rates on cattle herein shown.

That in violation of law, to-wit: the defendants acting in combination and conspiracy with one another and with said connecting carriers, namely, the Gulf, Colorado and Santa Fe Railway Company, The Chicago, Rock Island and Gulf Railway Company, The Missouri, Kansas & Texas Railway Company of Texas, The St. Louis San Francisco and Texas Railway Company, The Fort Worth and Rio Grande Railway Company, The Fort Worth and Denver City Railway Company, The Colorado and Southern Railway Company, The Texas Central Railway Company, The Houston and Texas Central Railway Company, The International and Great Northern Railway Company, The Texas Midland Railway Company, The Galveston, Harrisburg and San Antonio Railway Company, The St. Louis, Southwestern Railway Company of Texas, The San Antonio and Aransas Pass Railway Company, The Wichita Valley Railway Company, and all other railroad companies operating at that time in Texas, Oklahoma, New Mexico and Colorado, engaged in the through transportation of cattle from said points of origin to said points of destination, parties defendant to said cause 732, before the Interstate Commerce Commission by their said acts, combination and conspiracy in violation of law, in restraint of interstate commerce as to the rates of freight on the shipments made as herein referred to, by the advances of the said rates, imposed upon all shippers, and particularly those mentioned as consignors in said Appendix A, said unreasonable rates, maintained [fol. 286] the same and charged said rates on the said shipments as shown in said Report and Order of the Commission hereto attached as Exhibit A.

That the combination and conspiracy consisted of the said defendant and their said connecting carriers, on or about

March 3, 1903, coming together by their representatives and *my* means of personal communications and by correspondence, to establish and publish freight rates on cattle and other live stock as well as on other commodities by joint tariffs of rates, to which all of said defendants were parties, and by tariffs issued by the individual lines from their own stations and individual lines and their connecting lines where two or more lines participated in such transportation and by the joint tariffs of all of said defendants; said rates applying from said points of origin named in said Appendix A aforesaid to the destinations therein named, and were the rates named in the column headed "rate paid."

That defendant and all of said carriers and the others in combination and conspiracy with each other put into effect said rates as joint and several rates and maintained them in restraint of interstate commerce in cattle, shipped from said points of origin to said destination, and by virtue of the said combination and conspiracy eliminated all competition in said rates, and advanced the same as found by the Interstate Commission in its said supplemental report and order, Exhibit A hereto, as shown by the difference in the "rate paid" and "rate advanced" as shown in said Appendix A, which advance was unjust, unreasonable and unlawful, and an unlawful restraint of interstate commerce, and were by combination and conspiracy contained in force by defendant down to November 17, 1908.

That the parties named in said Appendix A made the shipments and paid said unlawful rates as therein shown and consequently were damaged in their business and property to the extent of the difference in said rates and the rates ordered as shown in said Appendix A, in the aggregate amount and interest as shown by the finding of the Commission aforesaid; and that said Consignors so damaged assigned their claims for damages to plaintiff as shown in said Supplemental Report and Order of the Commission attached hereto as Exhibit A, as a part hereof, so that plaintiff is entitled to all the rights of the said injured parties, and is therefore damaged by virtue of the premises in his business and property in said amounts for all of [fol. 287] which defendants are jointly and severally liable to plaintiff, and which said defendants have failed and refused and still refuse to pay.

That said parties so damaged were entitled to treble damages and that plaintiff as assignee is entitled to recover the same, jointly and severally, together with interest, costs and attorneys' fees.

The plaintiff, therefore, prays citation, and on final hearing for his aforesaid damages, interest and costs and for reasonable attorneys' fees, and for general relief.

Cowan & Burney, Fort Worth, Texas; Deatherage & Creason, Kansas City, Mo., Attorneys for Plaintiff  
Cowan & Burney, Fort Worth, Texas; Deatherage & Creason, Kansas City, Mo., Attys. for Plff.

Fort Worth, Texas, Dec. 24, 1914.

STATE OF TEXAS,

County of Tarrant:

Before me, the undersigned authority, this day personally appeared E. B. Spiller plaintiff in the above cause who being by me duly sworn stated upon his oath that the allegations of the foregoing petition are true and correct.

E. B. Spiller.

Subscribed and sworn to before me this the 24 day of Dec., 1914. M. E. Griffiths, Notary Public, Tarrant Co. Tex. (Seal.)

The Master: Mr. Murphy, are you giving the dates of the filing of these respective papers as well as the exhibit itself?

Mr. Murphy: Yes, sir. I offer in evidence and ask that it be marked Exhibit 7 the petition filed by E. B. Spiller, et al., plaintiffs, vs. Missouri, Kansas & Texas Railway Company, et al., No. 4320, filed December 29, 1914, in the [fol. 288] District Court of the United States for the Western Division of the Western District of Missouri.

\* \* \* \* \*

Said paper to be supplied as Exhibit 7 is in words and figures as follows to-wit:

"That said petition, Exhibit 7, is identical mutatis mutandis, with Exhibit 6, supra, except as to amounts and names, and covers the same period of time."

Mr. Murphy: I now offer in evidence copy of the judgment rendered August 16, 1916, by the District Court of the United States for the Western Division of the Western District of Missouri in the case of E. B. Spiller vs. the Missouri, Kansas & Texas Railway Company, et al., including the defendant herein, St. Louis and San Francisco Railroad Company, No. 4308, and ask that be marked Exhibit 8.

Mr. Miller: We object to that for all of the reasons stated before.

Objection overruled.

To which ruling of the Master the defendant then and there duly excepted.

Said paper was marked Exhibit 8, and same is in words and figures as follows, to-wit:

(Exhibit 8 omitted here as same is identical with Ex. B attached to Intervening Petition of E. B. Spiller, hereinbefore set out.)

Mr. Murphy: I now offer in evidence judgment rendered on August 16, 1916, by the District Court of the United States for the Western Division of the Western District of Missouri in the case of E. B. Spiller, et al., vs. Missouri, Kansas & Texas Railway Company, et al., No. 4320, so far as it pertains to the St. Louis and San Francisco Railroad Company.

Mr. Miller: Same objection as last stated.

Said paper was marked Exhibit 9 and is in words and figures as follows, to-wit:

(Exhibit 9 omitted here as same is identical with Ex. B attached to Intervening Petition of E. B. Spiller, et al., hereinbefore set out.)

[fol. 289] Subject to objection, as to incompetency, counsel for defendant and St. Louis-San Francisco Railway Company, admitted that petition for writ of error was filed by the railroad company; that on the same date, August 28, 1916, petition for writ of error was filed over the signatures of W. F. Evans and Cowherd, Ingraham and Durham, attorneys for plaintiff in error (P. 16).

Subject to objections as to incompetency, counsel for the defendant and the St. Louis-San Francisco Railway Company, further admitted that on September 8, 1916, appeal bond was filed in 4308 in the penal sum of \$3,500.00, executed by the St. Louis & San Francisco Railroad Company, by Cowherd, Ingraham & Durham, Attorneys, as principals, and by the United States Fidelity & Guaranty Company, as surety.

Which objections as to incompetency were by the Special Master overruled; to which rulings of the Special Master, defendant, by counsel, then and there duly excepted, and still excepts (p. 17).

The Master: I am letting all of this in on the theory that it gives a history of the case and as bearing upon the diligence of the petitioners.

Mr. Murphy: I might state to the Master that it is also offered in connection with our claim for attorneys' fees, taxed as costs.

The Master: Yes, it gives a history of the proceeding.

Subject to the same objection as to incompetency, and with the further statement that the St. Louis & San Francisco Railroad Company appeared specially for the purpose of the motion and for no other purpose, counsel for the defendant, and the St. Louis & San Francisco Railroad Company further admitted, for the purpose of the record, that on November 1, 1915, the St. Louis & San Francisco Railroad Company filed a motion to quash the summons and return and to dismiss the cause as to the defendant, St. Louis & San Francisco Railroad Company, in cause No. 4308, in the District Court of the United States, for the Western Division of the Western District of Missouri.

Which objection as to incompetency was by the Special Master overruled; to which ruling of the Special Master, [fol. 290] defendant by counsel, then and there duly excepted, and still excepts (P. 17).

Counsel for interveners then offered in evidence, the motion to quash, filed November 1, 1915, to show that said motion question- the service upon an agent of the receiver,— failed to get service upon an agent of the receiver, and got service upon the railroad company. Said motion to quash was then read into the record, and it is in words and figures as follows, to-wit:

## EXHIBIT IN EVIDENCE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN  
DIVISION OF THE WESTERN DISTRICT OF MISSOURI

No. 4308

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al.,  
Defendants

Special appearance and motion of defendant St. Louis and San Francisco Railroad Company to quash the summons and return and to dismiss this cause as to this defendant

Now comes the St. Louis and San Francisco Railroad Company, appearing specially for the purpose of this motion and for no other purpose whatever, and moves this court to quash the summons and the return thereon and to dismiss this cause as to this defendant for the following reasons:

First. Said summons was improvidently issued.

Second. Said summons is illegal and void.

Third. The person named in the summons is not the same as the person served.

Fourth. Said St. Louis and San Francisco Railroad Company is a corporation organized under the laws of the State of Missouri, having its principal office in St. Louis, in the Eastern Division of the Eastern District of Missouri. At the time of the service of said summons said company was not and is not now doing business in the Western District of Missouri and is not an inhabitant thereof. Plaintiff in this cause is a citizen and resident of the State of Texas.

Wherefore this defendant asks that its motion be sustained.

St. Louis and San Francisco Railroad Company, Appearing Specially by Cowherd, Ingraham & Durham, Attorneys for Defendant.

[fol. 291] At this point, counsel for the defendant and the St. Louis-San Francisco Railway Company, admitted for the purposes of the record, that on December 7, 1915, the defendant, St. Louis & San Francisco Railroad Company, filed its Answer in case No. 4308, E. B. Spiller vs. Missouri, Kansas & Texas Railway Company, et al; and also filed its Answer in case No. 4320, E. B. Spiller, et al. vs. Missouri, Kansas & Texas Railway Company, et al., in the District Court for the Western District of Missouri, Cowherd, Ingraham, Durham & Morse appearing as attorneys for the railroad Company.

Mr. Murphy: I now offer in evidence the mandate and judgment of the United States Circuit Court of Appeals rendered in the case of E. B. Spiller vs. Missouri, Kansas & Texas Railway Company, et al., including the St. Louis and San Francisco Railroad Company, in cause No. 4308. The original opinion in that case was handed down on October 29, 1917, afterwards a motion for rehearing was filed by the defendant in error, E. B. Spiller, and in March 11, 1918 the original judgment was modified and mandate was filed March 27, 1918.

Mr. Miller: Objected to for the reasons stated in our previous objections.

Objection overruled.

To which ruling of the Master the defendant then and there duly excepted.

Said paper was marked Exhibit 10, and same is in words and figures as follows, to-wit:

(Ex. 10 omitted here as same is identical with Ex. C, attached to Intervening Petition of E. B. Spiller, hereinbefore set out.)

Subject to the same objection, and reserving the right to introduce any testimony in opposition if necessary, counsel further admitted the fact that it was stipulated between the attorneys for E. B. Spiller, et al., and the attorneys for the railroad company, that appeal need not be taken in 4320 but that judgment in 4320 would abide the result of the appeal in 4308.

Which objection as to the incompetency was by the Special Master overruled; to which ruling of the Special [fol. 292] Master, defendant, by counsel, then and there duly excepted and still excepts (P. 20).

Mr. Murphy: I now offer in evidence the judgment and mandate of the Supreme Court of the United States in the case of E. B. Spiller vs. St. Louis and San Francisco Railroad Company in case No. 4308, mandate having been filed June 6, 1920, in the office of the Clerk of the District Court for the Western Division of the Western District of Missouri.

Said paper was marked Exhibit 11, and the same is in words and figures as follows, to-wit:

(Ex. 11 omitted here as same is identical with Ex. D attached to intervening petition of E. B. Spiller hereinbefore set out.)

Mr. Murphy: I now offer in evidence petition and motion of E. B. Spiller in cause 4308 in the District Court of the United States for the Western Division of the Western District of Missouri for an additional allowance of attorneys' fees to be taxed as costs against the Atchison, Topeka & Santa Fe Railway Company, et al., including the St. Louis and San Francisco Railroad Company.

Mr. Miller: What is the date?

Mr. Murphy: It is not dated, but it was filed in July, 1920.

Mr. Miller: That is objected to for the reason heretofore offered, and for the further reason that the receivers, as shown by the record in this case, were discharged January 29, 1918, and because the St. Louis-San Francisco Railway Company entered into the possession and operation of the property of the St. Louis and San Francisco Railroad Company on November 1, 1918.

Objection overruled.

To which ruling of the Master the defendant then and there duly excepted.

Said paper was marked Exhibit 12, and is in words and figures as follows, to-wit:

[fol. 293]

EXHIBIT 12

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI

No. 4308

E. B. SPILLER, Plaintiff,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, MISSOURI,  
Kansas & Texas Railway Company, Missouri Pacific Rail-  
way Company, St. Louis & San Francisco Railroad Com-  
pany, Chicago, Rock Island & Pacific Railroad Co., Chi-  
cago & Alton Railroad Company, St. Louis, Iron Moun-  
tain & Southern Railway Co., Chicago & Eastern Illinois  
Railroad Company, Illinois Central Railroad Company,  
Defendants

Motion for an order to allow plaintiff's attorneys additional fees for services in the United States Circuit Court of Appeals and in the Supreme Court of the United States and to tax the same as a part of the costs

Now comes the plaintiff in the above entitled cause and shows to the court that by Sec. 16 of the Act to Regulate Commerce, of February 4, 1887, Chapter 104 24th Stat., 379, as amended, it is expressly provided that: "If the petitioner shall finally prevail, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit." That upon the hearing of this case before this court, this court allowed petitioner an attorney's fee of ten per cent of the amount of the judgment rendered by this court for the services of your petitioner's attorneys in the trial of this case before the court up to that time.

Plaintiff further shows to the court that the defendants herein each sued out separate writs of error from this court to the United States Circuit Court of Appeals for the Eighth Circuit, where it was necessary for the plaintiff in error to make voluminous briefs and to argue said cases in said

court; that thereafter said Circuit Court of Appeals rendered an opinion overruling the decision of this Court, and your petitioner thereupon filed his petition for rehearing in said Circuit Court of Appeals and made a brief in support thereof, which petition for rehearing was overruled; that your petitioner applied to the Supreme Court of the United States for writs of error and also for writs of certiorari to the Circuit Court of Appeals, which writs of certiorari were granted and it became necessary and your petitioner's [fol. 294] attorney did in fact appear before the United States Supreme Court and argue said writs of error and certiorari and also made briefs in support, both of the said writs of error and said writs of certiorari, with the result that said writs of certiorari were granted and the judgment and decision of the Court of Appeals of the Eighth Circuit were reversed and the judgment of this court was affirmed, and the cases have been remanded here by the United States Supreme Court.

Wherefore, the premises considered, the plaintiff moves the court to make an order allowing such additional sum for the services of plaintiff's attorneys in the United States Circuit Court of Appeals and in the United States Supreme Court as the court may deem reasonable, such additional sum to be taxed and collected as a part of the costs of the suit.

— — —, Attorneys for Plaintiff.

Filed Aug. 15, 1923. Jas. J. O'Connor, Clerk.

Mr. Murphy: I now offer in evidence judgment of the District Court of the United States for the Western Division of the Western District of Missouri in the case of E. B. Spiller vs. Missouri, Kansas & Texas Railway Company, et al., including the St. Louis and San Francisco Railroad Company, No. 4308, covering the motion and petition of E. B. Spiller for an allowance of additional attorneys fees to be taxed as costs. I haven't the date of that, but my understanding is it was July 20, 1920. If that is not correct, I will substitute the correct date.

Same objection and same ruling.

To which ruling of the Master the defendant then and there duly excepted.

Said paper was marked Exhibit 13, and the same is in words and figures as follows, to wit:

(Ex. 13 omitted here as same is identical with Ex. F attached to intervening petition of E. B. Spiller, hereinbefore set out.)

Mr. Murphy: I now offer in evidence copy of the notice served upon the St. Louis-San Francisco Railway Company December 2, 1920, that the intervener, E. B. Spiller, would [fol. 295] file his petition to be allowed to intervene in consolidated cause final No. 4174 on the 23rd of December, 1920. That is in cause No. 4308.

Same objection and same ruling.

To which ruling of the Master the defendant then and there duly excepted.

Said paper was marked Exhibit 14 and is in words and figures as follows, to-wit:

Ex. 14—11-29-21

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EAST-  
ERN DIVISION OF THE EASTERN DISTRICT OF MISSOURI,  
EIGHTH JUDICIAL CIRCUIT

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

No. 4290. In Equity

JOINT RAIL COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

## No. 4304. In Equity

BANKERS TRUST COMPANY and NEILL A. McMILLAN, as  
Trustees, Complainants,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

## No. 4334. In Equity

GUARANTY TRUST COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, BANKERS  
Trust Company, and Neil A. McMillan, as Trustees, De-  
fendants

## Consolidated Cause Final

Notice to Defendant of Filing of Petition of E. B. Spiller  
for Leave to Intervene

To the St. Louis & San Francisco Railway Company, the  
purchaser of the property sold under the final decree and  
order of the court in the above-entitled cases:

You will please take notice that, E. B. Spiller, having  
made demand upon you for the payment of his claim founded  
upon the judgment against the St. Louis & San Francisco  
[fol. 296] Railroad Company by the United States District  
Court for the Western Division of the Western District of  
Missouri, and which judgment the said E. B. Spiller claims  
is prior in lien and superior in equity to the refunding mort-  
gage and the general lien mortgage upon the property pur-  
chased by you under said final decree, and which payment  
you have failed and declined to make, will present to the  
United States District Court for the Eastern Division of  
the Eastern District of Missouri, Eighth Judicial Circuit,  
his petition to be allowed to intervene in said cause and to  
have his said claim adjudged to be prior in lien and superior  
in equity to said refunding mortgages and general lien  
mortgages and to have such claim enforced against the  
property sold to you as purchaser under said final decree,  
in accordance with the usual practice of said court in rela-

tion to payments of similar character, and that said petition will be duly presented to said court, at the court room of said court, in the City of St. Louis, Missouri, on the 23rd day of December, 1920, at ten o'clock A. M. or as soon thereafter as counsel can be heard, copy hereto attached.

S. H. Cowan, B. F. Deatherage, Attorneys for Intervener.

Filed Aug. 15, 1923. Jas. J. O'Connor, Clerk.

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Mr. Murphy: May it be stipulated, Mr. Miller, that a similar notice was served in cause No. 4320 in the District Court of the United States for the Western Division of the Western District of Missouri, entitled E. B. Spiller, et al. vs. M. K. & T. Railway Company, et al., including the defendant in this cause? You will notice that one of them is filed in 4320 and one in 4308. In 4320 there is an additional plaintiff over 4308.

Mr. Miller: Well, you are offering them as notices filed in those cases. They are not notices filed in those cases.

Mr. Murphy: No, they are filed against the railroad company in the case of the claims mentioned in those cases.

Mr. Miller: These notices here refer to cases against the Railroad Company.

Mr. Murphy: And the fact that they are claimed to be a prior lien and superior in equity to the refunding mortgage and the general lien mortgage upon the property purchased by the Railway Company under the final decree.

[fol. 297] Mr. Miller: You are offering the notice itself in evidence?

Mr. Murphy: Yes.

Mr. Miller: We make the same objection to it.

Objection overruled.

To which ruling of the Master the defendant then and there duly excepted.

Mr. Murphy: I now offer in evidence the order of Judge Sanborn made and filed May 27, 1913, in the District Court of the United States for the Eastern Division of the Eastern District of Missouri in the cause of the North American Company, complainant, vs. St. Louis and San Francisco Railroad Company. I will read the part that I desire par-

ticularly to call the Master's attention to (Reading). "They (referring to the receivers appointed in the order) are authorized and directed to collect all moneys due and all moneys to become due to said Company, to institute and prosecute such suits in their own names as Receivers or in the name of the Company, as their attorney may advise, to defend such suits as may be brought against them and those now pending or hereafter brought against the Company which affect or may affect the property of which they now are or may become Receivers."

Mr. Miller: We object to that testimony for the same reason.

Objection overruled.

To which ruling of the Master the defendant then and there duly excepted.

Said paper was marked Exhibit 15, and is in words and figures as follows, to-wit:

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EXHIBIT 15

Filed August 15, 1923. Jas. J. O'Connor, Clerk

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF  
MISSOURI

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS, & SAN FRANCISCO RAILROAD COMPANY, Defendant

Order Granting Leave for Appointment of Receiver

On reading and considering the verified bill of complaint in this cause and on motion of counsel for the complainant, [fol. 298] and the defendant, the St. Louis and San Francisco Railroad Company appearing by its counsel and assenting thereto and upon due deliberation, It is ordered, adjudged and decree as follows:

(1) That the said bill and answer be filed and the prayer of the bill for the appointment of a receiver or receivers in this cause be and the same is hereby granted.

(2) That Thomas H. West and Benjamin L. Winchell be and they are hereby appointed Receivers and invested with the powers of receivers in equity of all the franchises, liens, claims, rights, interests and property of every name and nature, either at law or in equity and wherever situated, of the St. Louis and San Francisco Railroad Company, and they are hereby authorized and directed forthwith to take possession thereof, to preserve, manage, operate and use the same, to run and operate the railroads now held by said Company by lease or otherwise and to conduct the business of said Company according to law and in accordance with the principles, rules and practice in equity in cases of this character. They are authorized to apply to any other court or courts in this Circuit or any other Circuit for ancillary orders to assist them in the exercise of their powers and the discharge of their duties. They are authorized and directed to collect all moneys due and all moneys to become due to said Company, to institute and prosecute such suits in their own names as Receivers or in the name of the Company, as their attorney may advise, to defend such suits as may be brought against them and those now pending or hereafter brought against the Company which affect or may affect the property of which they now are or may become Receivers. They are also authorized with the advice of their attorney to compromise and settle the amounts owing from one party to the other in suits between them and third parties and between the company and third parties in ordinary cases arising out of the common operation of the Railroad.

(3) Out of the moneys coming to their hands they are authorized to pay, (1) the necessary expenses of operating the railroads and conducting the business during their receivership; (2) the taxes on the property; (3) the following claims incurred within six months preceding the date of this order, the wages and salaries of employees of the Company, the traffic and car mileage balances and accounts for car and equipment repairs.

[fol. 299] (4) It is hereby ordered that all persons, firms and corporations in possession of any of the property of which the Receivers are hereby appointed forthwith deliver the same to them or to their representatives or agents.

(5) The Railroad Company and the officers, directors, agents, attorneys and employes thereof, and all other persons claiming to act by virtue of or under said Railroad Company, and all other persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, are hereby restrained and enjoined from interfering with, attaching, levying upon or in any manner whatsoever disturbing any portion of the properties and premises of which Receivers are hereby appointed, or from taking possession of or in any manner interfering with the same or any part thereof, or from interfering in any manner or preventing the discharge by said Receivers of their duties or the operation of said properties and the premises under the order of this Court.

(6) The Receivers shall keep accurate accounts of their receipts and disbursements, take proper vouchers for their disbursements and file with the special master complete bi-monthly reports of their receipts and disbursements with the accompanying vouchers. They shall file with him an inventory of the properties coming into their possession as soon as they can conveniently prepare it.

(7) Within ten days from this date each of the said Receivers shall execute a bond with one or more sureties approved by this Court or one of the Judges thereof, in the sum of \$100,000 for the benefit of whom it may concern, conditioned that they will well and truly perform the duties of their officers and account for all moneys and properties which may come to their hands and abide by and perform all things which they shall be directed by the Court to do and shall file this bond with the clerk of this Court.

(8) The complainant herein as well as the Receivers may apply to any other Court of competent jurisdiction for such order or orders in the premises as it may deem necessary in aid of the orders issued by this Court.

Walter H. Sanborn, Circuit Judge.

Filed May 27th, 1913. W. W. Nall, Clerk.

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[fol. 300] At this point a recess was taken until 2 p. m., at which time the hearing was resumed as follows:

Mr. Murphy: I am offering stipulation of facts signed by the interveners and by the defendant and the St. Louis-San

Francisco Railway Company, subject to the objections which I will make to particular facts as I proceed, on the ground of relevancy and materiality.

The Master: Is that all the testimony you will put in?

Mr. Murphy: Yes.

The Master: Just give it to me and I will read it, unless you have some point you want to call my attention to.

Mr. Murphy: Well, I will just note my objections. We object to the following in paragraph two found on page two of the stipulation: "and during each of said years during said period expended large sums of money in current expenses incurred in the ordinary operation of its line of railroad," for the reason that said fact is wholly immaterial and does not prove or tend to prove any issue in this case. And we object to the following beginning on the last line of page two in the second paragraph: "and during each year within said period said Receivers paid large sums of money incurred as current expenses for the operation of the lines of railroad of defendant during said receivership," for the same reason. And we object to the following in paragraph two on page three of the stipulation: "That said moneys so collected by defendant were deposited in banks with other moneys of defendant in defendant's general account, and said banks had no instructions from defendant to keep said moneys in a specific fund, nor to refrain from paying same out in the ordinary course of business on defendant's checks against its fund in said banks, nor did said banks keep said money in a separate account, and that defendant checked out of its deposits in each of said banks during each year from June 1st, 1906, to May 27th, 1913, sums of money largely in excess of said alleged overcharges and deposited in said banks during each of said years sums of money largely in excess of said overcharges," for the same reason as assigned in the first objection—that is, that the facts recited in the portion of the stipulation quoted are wholly irrelevant and immaterial, do not prove or tend to prove any issues in the case.

Mr. Miller: We object to all of paragraph No. 1 of the stipulation for the reasons contained in our answer as to [fol. 301] why the claims should not be filed or considered. We object to that portion of paragraph No. 2 from the beginning of the paragraph down to and including the word "indebtedness" in the seventh line of the paragraph for

the same reason, because it is immaterial to any of the issues. We object to the following language beginning in line ten of paragraph two with the words "that during each of said years" and ending with the word "interest" in the fifth line from the bottom of page two, for the same reason. We object to that portion of paragraph two beginning with the words "that during the period" in the fifth line from the bottom of page two and ending with the word "indebtedness" in the last line of that page, for the same reason. We object to that portion of paragraph two on page three beginning with the words "that upon the appointment" in the sixth line from the bottom of the paragraph and concluding with the word "dollars" at the end of the paragraph, for the same reason.

The Master: The stipulation will be received in evidence subject to the objections.

Said stipulation is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

In Equity No. 4174

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

In the Matter of the Intervening Petition and Supplemental Intervening Petition of E. B. Spiller, et al. Intervening Petition No. 402.

In the Matter of the Intervening Petition and Supplemental Intervening Petition of E. B. Spiller. Intervening Petition No. 403

Consolidated Cause Final

#### STIPULATION OF FACTS

It is hereby stipulated between the above named interveners, St. Louis and San Francisco Railroad Company and St. Louis-San Francisco Railway Company parties

herein, that the following facts are agreed upon and shall be considered in evidence without further proof thereof, subject, however, to objection as to materiality, competency and relevancy:

[fol. 302]

## I

That on May 27th, 1913, the above entitled cause was instituted by North American Company, a corporation, as complainant, filing in this court a general creditor's bill against defendant; that receivers were on said date appointed as prayed for in said general creditor's bill; that on April 3rd, 1914, Rail Joint Company, a corporation, filed in this court its general creditor's bill against said defendant; that on May 22nd, 1914, Bankers Trust Company and Neill A. McMillan, as trustees under a general lien mortgage of defendant, filed in this court their complaint against defendant for the foreclosure of said general lien mortgage; that on July 9th, 1914, Guaranty Trust Company, Trustee in defendant's refunding mortgage, filed their complaint in this court for the foreclosure of said mortgage; that on January 6th, 1915, said Bankers Trust Company and Neill A. McMillan as Trustee, filed their amended and supplemental bill herein praying for the foreclosure of said general lien mortgage; that each of said bills requested the appointment of receivers for the property of defendant, and that receivers were appointed under said bill of said North American Company as aforesaid and all orders appointing receivers under said bill were adopted as appointments of receivers under each subsequent bill, and all of said causes were duly consolidated into the Consolidated Cause Final above styled; that on May 29th, 1914, an interlocutory decree was rendered impounding the property of defendant for the payment of its debts and obligations.

## II

That the gross receipts of defendant during each year from June 1st, 1906, to May 27th, 1913, exceeded defendant's operating expenses during each such year in an amount in excess of interveners' claims, including interest thereon; that during each of said years within said period defendant expended large sums of money in making im-

provements to its lines of railroad and equipment and in paying interest on its bonded indebtedness, and during each of said years during said period expended large sums of money in current expenses incurred in the ordinary operation of its lines of railroad; that during each of said years within said period defendant at all times had in cash on hand an amount of money in excess of said claims of interveners with interest thereon; that during the period of the receivership of the property of defendant, to-wit; May 27th, 1913, to January 29th, 1918, the gross operating receipts of said receivership during each of said years within said period were in excess of the operating expenses of said receivership, such excess amounting during each of said years to more than the total of the claims of interveners herein with interest; that during the period of said receivership, said receivers paid out under orders of said court large sums of money for improvements and betterments to the property and equipment of defendant, and large sums of money to bondholders of defendant by way of interest on its bonded indebtedness; and during each year within said period said receivers paid large sums of money incurred as current expenses for the operation of the lines of railroad of defendant during said receivership; that the alleged overcharges constituting interveners' demands were not kept by defendant in a separate or designated account or fund, nor were they separated from other gross receipts of defendant derived from the operation of its lines of railroad; that said moneys so collected by defendant were deposited in banks with other moneys of defendant in defendant's general account and said banks had no instructions from defendant to keep said moneys in a specific fund nor to refrain from paying same out in the ordinary course of business on defendant's checks against its funds in said banks, nor did said banks keep said moneys in a separate account, and that defendant checked out of its deposits in each of said banks during each year from June 1st, 1906, to May 27th, 1913, sums of money largely in excess of said alleged overcharges, and deposited in said banks during each of said years sums of money largely in excess of said alleged overcharges; that upon the appointment of said receivers, defendant turned over to said receivers and said receivers

received from defendant in cash the sum of approximately Three Hundred Thirty-Four Thousand Dollars (\$334,000). The term "large sums of money," as used in this paragraph II means at least several hundred thousand dollars.

### III

That any of the parties hereto may introduce in evidence without authentication printed copies of such of the orders, reports and decrees entered or filed in the above entitled cause as such party may desire and may also offer in evidence without authentication or certification such of the pleadings, orders, motions and judgments in the cause instituted by interveners against defendant on January 11th, 1915, in this Court involving the same claims presented by these interventions and similar papers from the suit filed [fol. 304] by interveners in the Federal Court at Kansas City, Missouri, involving said alleged overcharges, as such party may desire.

### IV

It is further stipulated that either party at any hearing on the above intervening petitions, may object on the ground of irrelevancy, immateriality or incompetency to any of the facts agreed upon in this stipulation and to the introduction of any of the documents or court proceedings herein referred to, but no objection shall be made on the ground that said documents or court proceedings are not originals, certified copies or properly authenticated.

### V

Any party to this proceeding shall have the right to introduce such additional competent evidence as it may desire to offer at any hearing on the above intervening petitions.

### VI

It is agreed that neither defendant nor said St. Louis-San Francisco Railway Company shall be held to have waived by virtue of this stipulation any of its defenses or pleas in bar to the filing of hearing of said intervening petitions as set forth and contained in their respective answers

thereto filed herein, but all said defenses and pleas in bar, and each of them, are hereby expressly reserved notwithstanding the execution of this stipulation.

Dated at St. Louis, Missouri, this 29th day of November, 1921.

(Signed) E. B. Spiller et al. and E. B. Spiller, by S. H. Cowan, D. A. Murphy, John S. Leahy, Walter H. Saunders, Their Solicitors. St. Louis and San Francisco Railroad Company and St. Louis-San Francisco Railway Company, by W. F. Evans, E. T. Miller, Their Solicitors.

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[fol. 305] Mr. Murphy: I am not exactly clear on the effect your Honor is going to give to Judge Sanborn's order. I want to expedite the matter as much as possible, but I don't want to waive any objections.

The Master: I have been thinking about that. It would seem from the evidence you have put into this record that you were not guilty of laches, that you pushed the affairs along as fast as you could upon which that order seems to have been based. I don't believe that order is *res adjudicata*, but that the whole matter ought to be gone into.

Mr. Murphy: I don't want to be held to have waived the binding effect of that order and my contention of the binding effect in the offer of proof along the lines that your Honor has suggested as to diligence, and so forth.

The Master: Well, I don't think I would hold that. I don't know what I will hold. I shall take that into consideration in connection with the evidence in this case in making my finding and report after all the evidence is in.

Mr. Murphy: So that our position may be stated positively in the record, we believe that Judge Sanborn's order is final and settled and not waived by the pleas in bar.

The Master: My present impression would be that if you put in evidence here to justify me in finding one way or the other that you were not bound by that final decree, that I would have to find against you. In other words, from my present viewpoint, I can't see that his order opening up this matter is *res adjudicata*. That is my present impression, although I have no preconceived ideas of the finding in this case.

Mr. Murphy: May it be admitted, Mr. Miller, that prior to the order confirming the sale, and on or about the 28th or 29th of August, 1916, the interveners notified the reorganization managers and the receivers and attorneys for the defendant railroad company that they had recovered judgments and adjudications in the District Court of the United States at Kansas City, and that the railroad company had appealed from those judgments and that interveners expected to enforce the claims evidenced by those judgments as preferred claims, prior in equity and superior in right to the claims of all mortgagees?

[fol. 306] Mr. Miller: I will state that copies of the notice to Henry W. Taft, attorney for Reorganization Committee and the St. Louis-San Francisco Railway Company, and others, were served on W. F. Evans on August 30, 1916.

Mr. Murphy: Isn't that August 29th?

Mr. Miller: Served on August 30. The original of the notice was served on the 29th of August, 1916, upon Henry W. Taft, W. F. Evans and others. That is the notice that you evidently referred to. I don't care whether it is the 30th or 29th, but that was the copy of notice that was served on Mr. Evans. Now, as to the others, the facts will probably show what your notice calls for. Of course, I can't admit it. I don't know a thing about it.

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E. T. MILLER, counsel for the defendant and the St. Louis-San Francisco Railway Company, upon examination by counsel for interveners, testified as follows:

Direct examination.

By Mr. Murphy:

Witness testified that W. F. Evans was General Solicitor for the Receivers; that he was either General Solicitor or General Counsel for the railroad company prior to the receivership, that he occupied both positions at certain times, that Mr. Evans was not with the company during federal control, (p. 28) which began December 27, 1917; that the general solicitor has charge of all legal matters affecting the property of the Company, and the general at-

torney worked under the general solicitor. Generally speaking, it was true that after the appointment of the receivers in May, 1913, and up until the time of the reorganization, the attorneys representing the Company and appearing in litigation against the railroad company, were attorneys employed by the receivers and compensated by them; the receivers continued the former legal representation in litigation pending or brought against the railroad company and the receivers, and paid salaries to them; attorneys handling suits against the old railroad company, though, did not get additional compensation, but there may have been some exceptions. Generally speaking, it is true that what is stated about continuing the same legal force during the pendency of the receivership applies also to the local attorneys who appeared for the railroad company during the pendency of the receivership; local attorneys change from time to time.

[fol. 307] Cowherd, Ingraham, Durham & Morse, of Kansas City, were the District Attorneys for the railroad company for some time prior to the receivership; he does not recall now without looking it up, whether Cowherd, Ingraham, Durham & Morse of Kansas City, became the District Attorneys for the receivers, or whether the present District Attorneys, Guthrie & Conrad occupied the position; Guthrie & Conrad is the same general firm, Cowherd and Ingraham being dead, and Mr. Durham being the only one left of that firm.

At this point the defendant and the St. Louis-San Francisco Railway Company, by Mr. Miller, admitted, subject to objection, that suit was filed on July 13, 1914, by the intervener, E. B. Spiller and the intervener E. B. Spiller, et al., in the District Court of the United States, for the Northern District of Texas, at Fort Worth, Texas, against various defendants, one of the defendants being the St. Louis & San Francisco Railroad Company, and W. B. Bidle, W. C. Nixon, and J. W. Lusk, receivers thereof, the cause of action being practically identical with that stated in the petition filed in the case in the District Court of Kansas City in which the judgments were rendered (p. 30).

The defendant and the St. Louis-San Francisco Railway Company, by Mr. Miller, admitted that on November 2, 1914, in said case of E. B. Spiller and E. B. Spiller, et al., against the St. Louis-San Francisco Railroad, W. B. Bid-

dle, W. C. Nixon, and J. W. Lusk, receivers thereof, et al., the said receivers of the St. Louis & San Francisco Railroad Company, through their attorneys, W. F. Evans, Thomas H. Bond, Andrews, Streetman, Burns & Logue, and Lockett & Rose, appeared in the District Court of the United States at Fort Worth, and on November 2, 1914, a plea in abatement signed by the Attorneys named was filed, (p. 30).

Mr. Miller: We ask that it be introduced in evidence, in connection with the admission, subject to our general objection.

Mr. Murphy: I offer the plea in abatement in evidence.

Mr. Miller: We make the general objection to that, heretofore stated.

The Master: It will be received subject to the objection.

To which ruling of the Master, the defendant by counsel duly excepted and still except, (P. 31).

Said paper was marked "Exhibit 16," and same is in words and figures as follows, to-wit:

[fol. 308]

# EXHIBIT 16

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF TEXAS, AT FORT WORTH

No. 704

E. B. SPILLER, Plaintiff,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY et al.,  
Defendants

Plea in Abatement of James W. Lusk, W. B. Biddle, and  
W. C. Nixon, as Receivers of St. Louis & San Francisco  
Railroad Company, Named as Defendants in the Above-  
entitled Cause.

Now comes James W. Lusk, W. B. Biddle and W. C. Nixon, as Receivers of St. Louis & Receivers of St. Louis & San Francisco Railroad Company, and appearing herein for the purpose of filing this plea in abatement, and for no other purpose, say:

1. That on May 27, 1913, by order of the United States District Court for the Eastern Division of the Eastern District of Missouri at St. Louis duly entered in Cause No. 4174, Equity, on the docket of said Court, styled North American Company, Complainant, vs. St. Louis & San Francisco Railroad Company, Defendant, Thomas H. West and Benjamin L. Winchell were duly appointed Receivers of all franchises, liens, claims, rights, interests and property of every name and nature of the St. Louis & San Francisco Railroad Company, and did duly qualify as such; and thereafter by order duly entered by said Court in said Cause, to-wit, on July 3, 1913, the resignation of Benjamin L. Winchell as receiver as aforesaid, was accepted to take effect on July 14, 1913, and W. C. Nixon and W. B. Biddle were duly appointed co-receivers with the aforesaid Thomas H. West, such appointment to take effect July 14, 1913, upon which date said W. C. Nixon and W. B. Biddle duly became and were co-receivers with the said Thomas H. West; and thereafter, by order duly entered in said court, to-wit, on December 8, 1913, the resignation of the aforesaid Thomas H. West was accepted and James W. Lusk duly appointed in his stead as co-receiver with the aforesaid W. C. Nixon and W. B. Biddle.

That it appears from the allegations of plaintiff's complaint filed in this cause that his cause of action herein is based upon transactions of St. Louis & San Francisco Railroad Company occurring and transpiring long prior to May 27, 1913, and long prior to the appointment of Receivers of said St. Louis & San Francisco Railroad Company, as hereinbefore set out, and that the liability sought to be enforced herein, insofar as pertains to these defendants accrued and became fixed long prior to the appointment of Receivers of said St. Louis & San Francisco Railroad Company, and is in truth and in fact a liability (if any at all) of St. Louis & San Francisco Railroad Company and not of Receivers; and that these defendants cannot, in any event, be held or become liable or bound for the payment or satisfaction of such liability as is sought to be enforced against them herein unless and except as may be directed by an order of the aforesaid United States District Court for the Eastern Division of the Eastern District of Missouri in the aforesaid cause No. 4174, Equity,

upon intervention properly presented and prosecuted in said cause,

That it does not appear from the allegations of plaintiff's complaint herein, nor from any of the papers in this Cause, that the plaintiff has been granted leave of the said District Court of the United States for the Eastern Division of the Eastern District of Missouri to sue the said James W. Lusk, W. B. Biddle and W. C. Nixon as Receivers as aforesaid, or to make them parties to this cause; and the said James W. Lusk, W. B. Biddle and W. C. Nixon say that in truth and in fact plaintiff has not obtained leave of the said United States District Court for the Eastern Division of the Eastern District of Missouri to sue said Receivers, or to make them parties to this cause.

Wherefore, these defendants say that they are in no way proper parties to this cause, and especially that they cannot lawfully be made parties to this cause, and cannot be sued herein unless and until plaintiff first obtain leave of the said United States District Court for the Eastern Division of the Eastern District of Missouri to sue said Receivers, or to make them parties to this cause, for the reason that, as above alleged, plaintiff's cause of action, if any he has, accrued against the St. Louis & San Francisco Railroad Company (and not the Receivers thereof) prior to May 27, 1913, the date of the appointment of Receivers of the said St. Louis & San Francisco Railroad as aforesaid.

[fol. 310] Wherefore, these defendants pray that this cause be as to them abated and dismissed, and that they be adjudged to go hence without a day and with their costs.

(Signed) W. F. Evans, Thos. H. Bond, Andrews, Streetman, Burns & Loyne, Larken & Rowe, Attorneys for James W. Lusk, W. B. Biddle, and W. C. Nixon, Receivers St. Louis & San Francisco Railroad.

STATE OF TEXAS,  
County of Tarrant:

Before me, the undersigned authority, on this day personally appeared J. L. Lockett, Jr., who being by me duly sworn, says, that he is one of the attorneys for James W. Lusk, W. B. Biddle and W. C. Nixon, and as such attorney authorized to make this affidavit; that he has read the fore-

going Plea in Abatement and that the matters of fact therein set forth are true and correct, as he verily believes.  
(Signed) J. L. Lockett.

Sworn to and subscribed before me this 2nd day of November, A. D. 1914. (Signed) Finnye L. Williams, Notary Public in and for Tarrant County, Texas.

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At this point the defendant and the St. Louis-San Francisco Railway Company admitted, subject to the same objection, that on November 2, 1914, W. F. Evans, Andrews, Streetman, Burns & Logue, and Lockett and Rose, filed an answer in that case in the District Court at Fort Worth, Texas, for the St. Louis & San Francisco Railroad Company.

The Master: That will be received, subject to the objection.

To which ruling of the Master, the defendant by counsel duly excepted and still excepts.

The defendant and the St. Louis-San Francisco Railway Company, by Mr. Miller, further admitted that a writ of error was prosecuted in the name of the defendant, St. [fol. 311] Louis & San Francisco Railroad Company, from the judgment of the District Court for the Western Division of the Western District of Missouri, to the Circuit Court of Appeals of the Eight Circuit, and that the attorneys who appeared were attorneys for the receivers, and received their whole compensation from the receivers at that time. On November 1, 1916, the new company, the St. Louis & San Francisco Railway Company, took over the property of the old company, and from that date has operated the said properties up to the present time, except during the period of Federal control. The record will show who the attorneys who appeared in the prosecution of the writs of error in the Circuit Court of Appeals, were the attorneys for; the railway company paid them from November 1, 1916. That is true so far as the activities of the attorneys for the St. Louis-San Francisco Railway Company, through the Cir-

cuit Court of Appeals and through the Supreme Court. (P. 32.)

The case which was appealed by the railroad company from the District Court of the United States for the Western Division of the Western District of Missouri, was appealed, according to the record, on August 28, 1916. At that time the attorneys who were employed and paid by the receivers were handling the litigation. (P. 33.)

The case in the Circuit Court of Appeals was not decided until 1918. From November 1, 1916, until the decision of the Circuit Court of Appeals in 1918, the attorneys employed and paid by the St. Louis-San Francisco Railway Company, handled the litigation. That is also true of the activities of the defendant railway company in the Supreme Court of the United States, on the appeal of the interveners from the judgment of the Circuit Court of Appeals to the Supreme Court, except during the period of Federal control. (P. 33.)

During the period of Federal control, Mr. Evans was in the employ of the railroad administration.

Mr. Murphy: I want to offer in evidence the reorganization plan of the St. Louis and San Francisco Railroad Company.

Mr. Miller: The same general objection is made to that, and I object further to that unless the purpose of the offer is disclosed, because it is incompetent to any of the issues. I don't know what their object is in offering that. I would like to know.

[fol. 312] Mr. Murphy: Well, I have two objects in mind. It goes to the question of the court's order in allowing the interventions to be filed and heard. The evidence shows conclusively that in allowing this as a preferred claim no other creditor of the St. Louis and San Francisco Railroad Company can be injured or in any way affected, and that no party to any of the proceedings can claim to be legally injured or affected by the allowance of this claim as a preferred claim. That is one of the objects. The other object goes to the general consideration and the equities involved in our claim.

Mr. Miller: We object for the further reason that it is not a preferred claim under the final decree in this case. The final decision settled all those questions. If it is offered

for the purpose of discrediting the final decree, or the contract made thereby with the purchasers of the property, it is res adjudicata, therefore the purpose for which it is offered cannot be material here because foreclosed by the decree in this case.

The Master: Objection will be overruled. I am letting in all of this testimony so that the court when it gets my report will have all the evidence and facts before it.

To which ruling of the Master the defendant then and there duly excepted.

Said paper was marked Exhibit 17, same being in words and figures as follows, to-wit:

EXHIBIT 17—11-29-21. D. J. H.

Filed Aug. 15, 1923. Jas. J. O'Connor, Clerk

Reorganization of St. Louis and San Francisco Railroad  
Company

Plan and Agreement, Dated November 1, 1915

Reorganization managers: J. & W. Seligman & Co.,  
Speyer & Co.

Depositories: Central Trust Company of New York, Mississippi Valley Trust Company, St. Louis; Berliner Handels-Gesellschaft, Berlin; Associate: Cassa, Amsterdam, for refunding mortgage bonds; Bankers Trust Com-[fol. 313] pany, New York, for General Lien 15-20 Year Gold Bonds; Guaranty Trust Company of New York, for Stock; Central Trust Company of New York, for other securities embraced in Plan.

Reorganization of St. Louis and San Francisco Railroad  
Company

The undersigned have been for a long time engaged in an examination of the affairs of the St. Louis and San Francisco Railroad System, and the relative value and earning capacity of its various lines, with a view of formulating a Plan of Reorganization which would fairly recognize

the rights of the security-holders. Much time and attention have been devoted to acquiring knowledge as to details, and a careful expert examination of the Company's operations and physical condition, and of its financial requirements, has been made by Mr. J. W. Kendrick. The following plan for the reorganization of the System has been formulated which it, is expected will accomplish, among other things, the following results:

(a) Reduction of the fixed charges to a limit believed to be safely within the net earnings capacity of the reorganized property;

(b) Adequate capital provision for present and future requirements;

(c) Payment or adjustment of all debts, guaranties, etc., and provision for existing equipment trust obligations;

(d) The preservation of the parts of the System deemed advantageous, and such control for the reorganized property as shall safeguard the rights of security holders.

Having these objects in view, the annexed Plan has been prepared, and Messrs. J. & W. Seligman & Co. and Speyer [fol. 314] & Co. have undertaken to act as Reorganization Managers to carry out the plan.

New York, February 21, 1916.

Frederick Strauss, James N. Wallace, Alexander J. Hemphill, Edwin G. Merrill, Harry Bronner, C. W. Cox, Breckenridge Jones, Committee representing holders of St. Louis and San Francisco Railroad Company refunding mortgage bonds deposited under the agreement dated June 20, 1914. Speyer & Co., representing holders of St. Louis and San Francisco Railroad Company General Lien 15-20 year five per cent bonds deposited under the agreement dated May 28, 1913. L. C. Krauthoff, representing office National des Valeurs Mobilieres, Paris, and le Comite de Defense des porteurs francais d'obligations St. Louis and San Francisco Railroad Company general lien five per cent gold bonds, French series, and as attorney-in-fact for depositing holders of such bonds.

Plan and Agreement for the Reorganization of St. Louis  
and San Francisco Railroad Company

Bonds, Trust Certificates and Stock Which May Be Deposited under the Plan and Agreement on the Terms Stated in the Plan.

[fol. 315] St. Louis and San Francisco Railroad Company, Refunding Mortgage Four Per Cent Gold Bonds.

Depositories: Central Trust Company of New York, Mississippi Valley Trust Company, St. Louis; Berliner Handels-Gesellschaft, Berlin; Associatie, Cassa, Amsterdam.

St. Louis and San Francisco Railroad Company, General Lien 15-20 Year Five Per Cent Gold Bonds.

Depository: Bankers Trust Company, New York.

St. Louis San Francisco Railroad Company, Consolidated Mortgage Four Per Cent Gold Bonds.

St. Louis and San Francisco Railroad Company, Southwestern Division First Mortgage Five Per Cent Gold Bonds.

St. Louis and San Francisco Railroad Company, Central Division First Mortgage Four Per Cent Gold Bonds.

St. Louis and San Francisco Railroad Company, Northwestern Division First Mortgage Four Per Cent Gold Bonds.

St. Louis and San Francisco Railway Company, Trust Mortgage Five Per Cent Gold bonds of 1887.

St. Louis and San Francisco Railway Company, Trust Mortgage Six Per Cent Gold Bonds of 1880.

St. Louis and San Francisco Railway Company, Missouri and Western Division First Mortgage Six Per Cent Gold Bonds.

St. Louis, Wichita and Western Railway Company, First Mortgage Six Per Cent Gold Bonds.

St. Louis and San Francisco Railroad Company, Kansas City, Fort Scott and Memphis Railway Company Guaranteed Four Per Cent Preferred Stock Trust Certificates.

Muskogee City Bridge Company, First Mortgage Five Per Cent Gold Bonds.

St. Louis, Memphis and Southeastern Railroad Company, First Mortgage Four Per Cent Gold Bonds.

Chester, Perryville & Ste. Genevieve Railway Company, First Mortgage Five Per Cent Gold Bonds.

[fol. 316] Pemiscot Railroad Company, First Mortgage Six Per Cent Gold Bonds.

Kennett & Osceola Railroad Company, First Mortgage Six Per Cent Gold Bonds.

Southern Missouri and Arkansas Railway Company, First Mortgage Five Per Cent Gold Bonds.

Fort Worth and Rio Grande Railway Company, First Mortgage Four Per Cent Gold Bonds.

Quanah Acme and Pacific Railway Company, First Mortgage Six Per Cent Gold Bonds.

Depository: Central Trust Company of New York.

St. Louis and San Francisco Railroad Company, First Preferred Stock.

St. Louis and San Francisco Railroad Company, Second Preferred Stock.

St. Louis and San Francisco Railroad Company, Common Stock.

Depository: Guaranty Trust Company of New York.

All bonds and trust certificates deposited must be in negotiable form and all stock certificates and registered bonds deposited must be either endorsed in blank for transfer or accompanied by proper transfers in blank duly executed. The Refunding Mortgage Four Per Cent Gold Bonds must bear the coupon maturing July 1, 1914, and all subsequent coupons; the General Lien 15-20 Year Five Per Cent Gold Bonds must bear the coupon maturing May 1, 1914, and all subsequent coupons; other bonds must bear all coupons maturing after July 1, 1916. All references in the Plan and in the accompanying Agreement to said bonds, shall unless the context otherwise requires, be deemed to include also the respective coupons stated. All securities and all certificates of stock must bear proper stamps for transfer in New York.

#### Other Bonds and Notes and Claims Dealt with in the Reorganization

St. Louis and San Francisco Railroad Company, New Orleans, Texas and Mexico Division First Mortgage Gold Bonds.

[fol. 317] St. Louis and San Francisco Railroad Company, Two Year Five Per Cent. Secured Gold Notes.

St. Louis and San Francisco Railroad Company, Two Year Six Per Cent Secured Gold Notes.

St. Louis and San Francisco Railroad Company, Trust Certificates for Preferred Stock, Chicago and Eastern Illinois Railroad Company for Common Stock, Chicago and Eastern Illinois Railroad Company.

Ozark & Cherokee Central Railway Company First Mortgage- Five Per Cent Gold Bonds.

#### Other Debt, Secured and Unsecured

#### Securities Undisturbed in the Reorganization

St. Louis and San Francisco Railway Company, General Mortgage Five Per Cent. and Six Per Cent. Gold Bonds, Due 1931.

St. Louis and San Francisco Railroad Company, All Equipment Trust Obligations maturing after July 1, 1917.

Kansas City, Fort Scott and Memphis Railway Company System, All Bonds.

#### Conditions of Participation

This Plan and Agreement has been prepared and adopted by the Committee constituted under the agreement dated June 20, 1914, of Holders of Four Per Cent. Gold Bonds of St. Louis and San Francisco Railroad Company, issued under the Refunding Mortgage, dated June 20, 1901, and a copy of this Plan and Agreement has been, or will be, lodged with each of the Depositaries under said agreement of June 20, 1914. Notice of the fact of the approval and adoption will be given in accordance with the provisions of said agreement. Every holder of a certificate of deposit under said agreement of June 20, 1914, who shall not exercise, the right of withdrawal conferred by said agreement within the period therein limited, shall be conclusively and finally deemed for all purposes to have irrevocably waived the right of withdrawal given by said agreement, and this Plan and Agreement shall be binding on all holders of certificates of deposit who shall not so withdraw their deposited bonds. The rights of such holders of certificates of deposit, however, shall be such only as are conferred by this Plan and Agreement and shall be subject to compliance

[fol. 318] with such terms as this Plan and Agreement may impose as conditions of participation in the benefits hereof. Holders of certificates of deposit not so exercising such right of withdrawal will be entitled to the benefits of this Plan and Agreement without the issue of new certificates.

Holders of Refunding Mortgage Bonds not heretofore deposited under the agreement of June 20, 1914, may, on or before April 3, 1916, deposit with some one of the Depositories under said agreement their said bonds with the coupon maturing July 1, 1914, and subsequent coupons attached, and shall receive therefor certificates of deposit of such Depositary issued under that agreement.

This Plan and Agreement has been prepared and adopted by Speyer & Co. acting under the agreement dated May 28, 1913, between Speyer & Co. and Holders of General Lien 15-20 Year Five Per Cent. Gold Bonds of St. Louis and San Francisco Railroad Company, and a copy of this Plan and Agreement with their written adoption and approval thereof has been, or will be lodged by Speyer & Co. with the Depositary under said agreement of May 28, 1913. Notice of the fact of such adoption and approval and of the lodging of a copy thereof with said Depositary will be given in accordance with the provisions of said agreement of May 28, 1913. All holders of certificates of deposit under said agreement of May 28, 1913, who shall not exercise the right of withdrawal conferred by said agreement within the period therein limited, shall be deemed to have assented to this Plan and Agreement and shall be bound thereby without further act or notice, but, notwithstanding the rights of such holders of certificates of deposit shall be only such as are conferred by this Plan and Agreement and shall be subject to compliance with such terms as this Plan and Agreement may impose as conditions of participation in the benefits hereof. Holders of certificates of deposit not so exercising such right of withdrawal will be entitled to the benefits of this Plan and Agreement without the issue of new certificates.

Holder of General Lien 15-20 Year Five Per Cent. Gold Bonds not heretofore deposited under the agreement of May 28, 1913, may, on or before April 3, 1916, deposit with the Depositary under said agreement of May 28, 1913, their

said bonds with the coupon maturing May 1, 1914, and subsequent coupons attached, and shall receive therefor certificates of deposit of said Depositary issued under that agreement.

[fol. 319] This Plan and Agreement has been prepared and adopted by the Comité de Défense of French Holders of General Lien 15-20 Year Five Per Cent. Gold Bonds of St. Louis and San Francisco Railroad Company, French Series, and by the Office National des Valeurs Mobilières, Paris, under whose direction and auspices said Comité de Défense was established, and a large number of said holders (1) have executed a power of attorney in the form annexed to and made a part of the Instrument of Designation executed by L. C. Krauthoff, Esq., the Attorney-in-fact of said holders, dated August 5, 1915, of the Bankers Trust Company as Depositary for such bonds, and (2) have made deposit of said bonds subject to such respective powers of attorney with said Depositary. The written assent of said Attorney-in-fact to this Plan and Agreement filed with said Depositary and the written direction of said Attorney-in-fact to said Depositary to hold the bonds and coupons at any time received by said Depositary subject to this Plan and Agreement and to the order of the Reorganization Managers for the purposes of carrying the Plan and Agreement into effect, shall operate as the assent to this Plan and Agreement by all holders of certificates of deposit at any time issued by said Depositary, or by any of its agents, including The Equitable Trust Company of New York (Paris Branch), and then outstanding, and all such holders shall be bound by such assent so expressed without further act or notice. The rights of such holders of certificates, however, shall be such only as are conferred by this Plan and Agreement and shall be subject to compliance with such terms as this Plan and Agreement may impose as conditions of participation in the benefits hereof. Holders of such certificates of deposit shall be entitled to the benefits of this Plan and Agreement without the issue of new certificates. At the request of the Reorganization Managers said Depositary shall stamp all powers of attorney deposited with it so as to indicate that such holders have assented to this Plan and Agreement.

Holders of General Liens 15-20 Year Five Per Cent. Gold Bond, French Series, may, on or before April 3, 1916, deposit with said Depositary, or one of its agents, their said bonds with the coupon maturing May 1, 1914, and subsequent coupons attached, accompanied by a properly executed power-of-attorney to said Attorney-in-fact, in substantially said form, and shall receive therefor certificates of deposit of said Depositary issued pursuant and subject [fol. 320] to the powers conferred by said power-of-attorney, and stamped as assenting to this Plan and Agreement.

Pursuant to the arrangement with the Purchase Syndicate hereinafter stated, holders of First Preferred, Second Preferred and Common Stock of St. Louis and San Francisco Railroad Company, comply with the terms and conditions of this Plan and Agreement, may, to the extent hereinafter stated, purchase from the Purchase Syndicate new Prior Lien Mortgage Five Per Cent. Gold Bonds and new Common stock (trust certificates) at the price and on the terms hereinafter prescribed. Holders of said stocks in order to become entitled to the benefits of the Plan and to obtain such right of purchase, must deposit their said stock with Guaranty Trust Company of New York, the Depositary for that purpose, on or before April 3, 1916, and at the time of such deposit must pay to said Depositary the sum of \$5 for each share deposited. Certificates of deposit of said Depositary will be issued for all stock so deposited and in receipt of which payment shall be so made.

Holders of other securities called for deposit under the Plan must, on or before April 3, 1916, deposit their securities with all coupons maturing after July 1, 1916, with Central Trust Company of New York, the Depositary for that purpose, and shall receive therefor certificates of deposit of said Depositary in form approved by the Reorganization Managers.

No estimate, statement, explanation, or suggestion contained in the Plan or the accompanying Agreement or in any circular issued or which may hereafter be issued by the Refunding Mortgage Bondholders' Committee, or by Speyer & Co. as Representatives of the General Lien Mortgage Bondholders, or by the Comité de Défense of French Holders of General Lien 15-20 Year Five Per Cent. Gold Bonds, French Series, or by the Office National des Valeurs

Mobilières, Paris, or by their Representative, or by the Reorganization Managers, or by any of the Depositaries or by any one else, is intended or is to be accepted as a warranty or as a condition of deposit or assent under the Plan or the accompanying Agreement and no defect or error shall release any deposit under the Plan and the accompanying Agreement or affect or release any assent thereto or affect or release any payment made or action taken pursuant thereto except by written consent of the Reorganization Managers.

[fol. 321] The securities and moneys deposited and paid under the Plan or by the terms hereof becoming subject to the Plan, will be held by the respective Depositaries subject to the order and control of the Reorganization Managers as provided in the Reorganization Agreement.

All securities deposited under the Plan or otherwise becoming subject to the Plan are to be kept alive so long as deemed necessary by the Reorganization Managers for the purposes of reorganization or the protection of the New Company or its security holders. Unless the context shall otherwise require, the term securities wherever used in this Plan and in the accompanying Agreement shall be deemed to include stocks.

#### New Railroad Company

It is contemplated that the various properties will be sold under foreclosure of the Refunding Mortgage or the General Lien Mortgage or both mortgages or under the general creditors' bill or otherwise dealt with, and a successor company or companies will be organized wherever the Reorganization Managers in their discretion may determine. The term New Company wherever used in this Plan or in the accompanying Agreement is intended to mean such company as the Reorganization Managers may determine to utilize for the purposes of the Plan. In case delay should occur in acquiring any of the mortgaged lines of railroad embraced in the Plan, the execution of the Plan will not necessarily be postponed for that reason but the existing bonds upon such lines deposited under the Plan may be pledged under the Prior Lien Mortgage as security for the bonds issued thereunder and, subject thereto, first

under the Adjustment Mortgage and then under the Income Mortgage, until such lines of railroad shall be acquired by the New Company and subjected in like order of priority to the liens of said mortgages.

It is contemplated that as a consideration for the property and securities to be conveyed and delivered to the New Company, or which it shall acquire pursuant to the Plan, it shall deliver its bonds and stock, excepting such final amounts thereof as shall be reserved for the future use of the New Company.

If, however, the Reorganization Managers shall, in carrying out the Plan, acquire for the purposes of the reorganization [fol. 322] tion, all the outstanding stock and First Mortgage Six Per Cent. Gold Bonds of New Mexico and Arizona Land Company, it is intended that such Land Company, or its properties or its stock and securities so acquired, shall be recapitalized or capitalized at \$1,000,000 common stock, authorized and issued, and that on the completion of the reorganization \$500,000 par amount of such recapitalized Land Company stock be distributed among outstanding holders of certificates of deposit for deposited stock of St. Louis and San Francisco Railroad Company of all classes in proportion to the par amount of deposited stock represented by the respective certificates of deposit (see page 22).

#### New Bonds and Stocks

All bonds will be payable in gold coin of the United States of America and both as to principal and interest will be payable so far as permitted by law, without deduction for Federal, State and Municipal taxes in the United States; and provision may be made that, if so determined, the principal or interest or both of any of the bonds may be made payable (1) in the City of New York only or (2) in said city and also in one or more American cities or foreign cities or countries or (3) only in one or more foreign cities or countries; and also in case any bonds of any series shall be payable as to principal or interest, or both, in any foreign country or countries, such bonds may be made payable in the currency or the respective currencies there current, at fixed rates of exchange, and may contain appropriate provisions as may be requisite or expedient to conform to the requirements of law or of

commercial usage in the foreign country or countries in which they may be made payable including provisions requiring the payment of the principal or interest thereof without deduction for taxes; and the bonds of any series may be expressed also in one or more foreign language or languages, the English language, however, to govern in the construction thereof.

It is intended, as far as deemed advisable, to vest directly in the New Company, the lines of railroad of companies the stocks of which are owned by the existing company and which may be acquired in the reorganization, so that the new Prior Lien Mortgage, Adjustment Mortgage and Income Mortgage may be made as far as deemed by the Reorganization Managers practicable direct liens in their relative order of priority. The form and terms of the respective mortgages and of the bonds to be issued under them shall, in all respects not expressly determined by the [fol. 32] Plan, be such as shall be approved by the Reorganization Managers.

The New Company is to authorize the following securities:

#### Prior Lien Mortgage Gold Bonds

The Prior Lien Mortgage Bonds will be limited to the total authorized amount of \$250,000,000 at any one time outstanding. They will bear interest, payable semi-annually, at such rate not exceeding six per cent, per annum as may from time to time be determined by the board of directors at the time of issue and stated in the bonds, and are to be secured by mortgage and deed of trust to Central Trust Company of New York and some individual as Trustees, which it is intended shall embrace all or substantially all the lines of railroad, franchises and equipment, terminals and other property (including stocks and bonds), except as otherwise dealt with under the Plan, acquired by the New Company pursuant to the Plan and also all additional property of every character (including stock and bonds) at any time thereafter acquired by the New Company. They may be issued in separate series maturing on the same or different dates and any series may be made redeemable in whole or in part, at time, on notice and at premiums as may be determined at the time of issue and stated in the bonds of such series. Under the Prior Lien

Mortgage the New Company will reserve the right to retire any series in whole or in part and to issue for such purposes and under such restrictions as may be prescribed in that behalf in said mortgage, the like aggregate principal amount of bonds in another series or in other series, bearing the same or different rates of interest as the series retired and with such maturity or maturities as the board of directors may determine.

The Prior Lien Mortgage Bonds are to be issued, or are to be reserved for issue under the Prior Lien Mortgage, for the following purposes:

In partial exchange for existing securities embraced in the Plan .....	\$93,398,500
Sold to Purchase Syndicate .....	25,000,000
For the corporate purposes of the New Company .....	6,811,500
Reserved to retire \$5,306,000 Equipment Trust Certificates maturing after July 1, 1917. ....	5,306,000
Reserved to retire \$9,484,000 St. Louis and San Francisco Railway Company General Mortgage 5% and 6% Bonds due 1931, undisturbed .....	9,484,000
Reserved for issue after January 1, 1917, at par, for new equipment.....	32,500,000
[fol. 324] Issuable prior to January 1, 1922, for entire cost at the rate of \$2,000,000 annually, cumulative until January 1, 1922 .....	\$10,000,000
Issuable after January 1, 1922, for two-thirds of cost at the cumulative rate of \$4,000,000 biennially .....	22,500,000
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Reserved for issue after January 1, 1917, at par, for improvements and betterments and for additions other than new mileage constructed or acquired .....	32,500,000

Issuable prior to January 1, 1922, for entire cost at the rate of \$3,000,000 annually, cumulative until January 1, 1922 .....	15,000,000
Issuable after January 1, 1922, for two-thirds of cost at the cumulative rate of \$4,000,000 biennially .....	17,500,000

Any of the bonds reserved for equipment which may not have been issued for that purpose are to be also available for issue after January 1, 1933 for improvements and betterments and for additions other than new mileage constructed or acquired and may be issued for two thirds of cost at the cumulative rate, for all bonds issuable for such respective purposes, of \$4,000,000, biennially.

Reserved for issue at par to meet the cost of construction of new mileage or of the acquisition of other lines of railroad stocks or bonds representative thereof .....	45,000,000
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Any of the bonds reserved to meet the cost of construction of new mileage or acquisition of existing lines, which may not have been issued for that purpose prior to January 1, 1931, are to be also available for issue thereafter for equipment or for improvements, betterments and additions, and may be issued for two thirds of cost at the cumulative rate for all bonds issuable for such respective purposes, of \$4,000,000 biennially.

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\$250,000,000

Of the Prior Lien Mortgage Bonds there are to be presently issued and delivered under the Plan:

\$93,398,500 Series A, Four Per Cent, maturing July 1, 1950, redeemable at par and accrued interest.

\$31,811,500 Series B, Five Per Cent, maturing July 1, 1950, redeemable at 105 and accrued interest.

The Series A Bonds will be applied in partial exchange for existing securities.

The Series B Bonds will be applied as follows:

Sold to Purchase Syndicate .....	\$25,000,000
For the corporate purposes of the New Company .....	6,811,500
	<hr/>
	\$31,811,500

The Prior Lien Mortgage Bonds, Series A, provided to be presently issued and delivered under the Plan in partial exchange for existing securities, so far as not used in such exchange are to be reserved for such purpose under restrictions to be fixed by the Reorganization Managers, but [fol. 325] if in the judgment of the Reorganization Managers it will facilitate the carrying out of the Plan to provide cash for the purposes for which such bonds might otherwise be reserved, they may sell such bonds in whole or in part and may cause the bonds so to be sold to be issued as Series B Bonds, Five Per Cent.

#### Cumulative Adjustment Mortgage Gold Bonds

The Adjustment Mortgage Bonds will be limited to the total authorized amount \$75,000,000 at any one time outstanding. They are to be secured by mortgage and deed of trust to Bankers Trust Company and some individual as Trustees, on the properties embraced in the Prior Lien Mortgage and from time to time becoming subject thereto. The Adjustment Mortgage will be subject to the Prior Lien Mortgage and to the prior payment out of the mortgaged property of all bonds at any time issued and outstanding under the Prior Lien Mortgage. The Adjustment Mortgage Bonds are to bear interest, payable annually or semi-annually as may be provided in the Adjustment Mortgage, at such rate not exceeding six per cent per annum as may from time to time be determined by the board of directors

at the time of issue and stated in the bonds but payable, prior to the maturity of the principal, only out of the Available Net Income of the New Company as hereinafter stated (see page 13) and as shall be defined in the Adjustment Mortgage. The New Company, however, will not be required in any year to pay interest except in amounts of one-quarter of one per cent or some multiple thereof, but any fractional amount not so distributed shall be carried forward into the next interest period. The interest on the Adjustment Mortgage Bonds will be cumulative but accumulations of interest shall not bear interest (see page 13). At the maturity of the principal, all arrears of interest shall be payable. The Adjustment Mortgage Bonds may be issued in separate series, maturing on the same or different dates, and any series may be made, in whole or in part, redeemable at the election of the New Company at times, on notice and at premiums as may be determined at the time of issue and stated in the bonds of such series but in all cases with accrued interest. Under the Adjustment Mortgage the New Company will reserve the right to retire any series in whole or in part and to issue for such purposes and under such restrictions as may be prescribed in that behalf in said mortgage, the like aggregate principal amount of bonds in another series or in other series, bearing the same or different rates of interest as the series re-[fol. 326] tired and with such maturity or maturities as the board of directors may determine.

The Adjustment Mortgage Bonds are to be issued, or are to be reserved for issue under the Adjustment Mortgage, for the following purposes:

In partial exchange for existing securities embraced in the Plan .....	\$40,547,818
Reserved for equipment, to be issued at par after January 1, 1922, at the cumulative rate of \$2,000,000 biennially, for one-third of the cost of equipment purchased .....	10,000,000
Reserved for improvements and betterments and for additions other than new mileage constructed or acquired, to be issued at par after January 1, 1922, at the cumulative rate of \$2,000,000 biennially, for one-third of cost .....	10,000,000

Reserved to be issued at par after January 1, 1932, at the cumulative rate of \$3,000,000 annually for that part of the cost of improvements and betterments and for additions other than new mileage constructed or acquired, in respect of which Prior Lien Mortgage Bonds shall not be issued. 14,452,182

Any bonds reserved for any of the aforesaid purposes which shall not have been issued for the purpose for which they shall be reserved are to be available for issue after January 1, 1932, also for any other of said purposes in addition to the bonds specifically reserved therefor and under the like restrictions.

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\$75,000,000

Of the Adjustment Mortgage Bonds, \$40,547,818, Series A, Six Per Cent., carrying interest from July 1, 1915, maturing July 1, 1955, and redeemable at par and accrued interest, are presently to be issued and delivered under the Plan and to be applied in partial exchange for existing securities.

#### Income Mortgage Gold Bonds

The Income Mortgage Bonds will be limited to the total authorized amount of \$75,000,000 at any one time outstanding. They are to be secured by mortgage and deed of trust to Union Trust Company of New York and some individual as Trustees on the properties embraced in the Prior Lien Mortgage, and from time to time becoming subject thereto. The Income Mortgage will be subject to the Prior Lien Mortgage and to the Adjustment Mortgage and to the prior payment out of the mortgaged property of all bonds at any time issued and outstanding under the Prior Lien Mortgage, and of all bonds at any time issued and outstanding under the Adjustment Mortgage. The Income Mortgage Bonds are to bear interest, payable annually or semi-annually as may be provided in the Income Mortgage, at such rate not exceeding six per cent. per annum as may [fol. 327] from time to time be determined by the board of directors at the time of issue and stated in the bonds but payable only out of the Available Net Income of the New

Company as hereinafter stated (see page 13) and as shall be defined in the Income Mortgage, but only after the payment therefrom of all interest on the Adjustment Mortgage Bonds. The New Company, however, will not be required to pay interest except in amounts of one-quarter of one per cent. or some multiple thereof, but any fractional amount not so distributed will be carried forward into the next interest period. The interest on the Income Mortgage Bonds will not be cumulative. The Income Mortgage Bonds may be issued in separate series maturing on the same or different dates and any series may be made in whole or in part redeemable at the election of the New Company at times, on notice and at premiums as may be determined by the board of directors at time of issue and stated in the bonds of such series. Under the Income Mortgage the New Company will reserve the right to retire any series in whole or in part and to issue for such purposes and under such restrictions as may be prescribed in that behalf in said mortgage, the like aggregate principal amount of bonds in another series or in other series, bearing the same or different rates of interest as the series retired and with such maturity or maturities as the Board of Directors may determine.

The Income Mortgage Bonds are to be issued, or are to be reserved for issue under the Income Mortgage, for the following purposes:

To be issued in partial exchange for existing securities embraced in the Plan and for adjustment of Outstanding Indebtedness, bonds not used or required to be reserved for that purpose to be available for the corporate purposes of the New Company	\$35,192,000
Reserved for issue at par after January 1, 1922, at the cumulative rate of \$2,000,000 annually for improvements, betterments and additions and equipment	20,000,000
Reserved for issue at par after January 1, 1932, at the cumulative rate of \$3,000,000 annually for improvements, betterments and additions and for equipment	19,808,000
	<hr/> \$75,000,000

[fol. 328] Of the Income Mortgage Bonds \$35,192,000, Series A, Six Per Cent., ranking for interest from July 1, 1915, maturing July 1, 1960, redeemable at par, and interest for proportionate part of current interest period, are presently to be issued and delivered under the Plan and to be applied in partial exchange for existing securities and for adjustment of Outstanding Indebtedness.

### Preferred Stock

The Preferred Stock will be entitled to receive for any fiscal year dividends at such rate not exceeding Seven Per Cent. per annum and no more as may be from time to time determined by the board of directors at the time of issue thereof and stated in the certificates therefor but such dividends will not be Cumulative. Subject further as herein-after stated (see page 13), no dividend shall be declared or paid on the Common Stock for any fiscal year until full dividends have been paid or set aside on the Preferred Stock for such fiscal year and no dividend shall be paid on the Preferred Stock for any fiscal year other than out of the net income for such fiscal year applicable to the payment of dividends, unless for the two fiscal years next preceding, the full interest shall have been paid on the outstanding Income Mortgage Bonds. The Preferred Stock may be issued in series and any series may be made in whole or in part redeemable at the election of the Company on such terms, on such notice and at such premiums as the board of directors may determine at the time of issue and be stated in the certificates of such series.

The Preferred Stock will be applied as follows:

For adjustment of Outstanding Indebtedness (to be issued as Six Per Cent. Stock, and to be redeemable, if allowed by law, at par and proportionate dividend for current dividend period), any stock not so used to be avail- able for the corporate purposes of the New Company .....	\$7,000,000
Reserved for future issue for corporate pur- poses, not exceeding .....	193,000,000
	<hr/>
	\$200,000,000

[fol. 329]

## Common Stock

The Common Stock will be applied as follow :

For sale to Purchase Syndicate .....	\$43,180,000
For adjustment of Outstanding Indebtedness, any stock not so used to be available for the corporate purposes of the New Company ..	5,300,000
Reserved for future issue for corporate pur- poses, not exceeding .....	201,520,000
	<hr/>
	\$250,000,000

The Reorganization Managers may, in the course of the reorganization, procure the issue of securities or stock of the New Company for any of the purposes for which such securities or stock would otherwise be reserved pursuant to the Plan, and under like restrictions.

So far as the reorganization or the issue of securities or stock under the Plan may be subject to the approval or authorization of any public utilities or public service commission in any state in which any part of the property is situated or in which the Reorganization Managers may in their discretion determine to organize the New Company, or of any other commission having authority in the premises, the amount of capitalization to be issued in the reorganization may be reduced by such amount as the Reorganization Managers may in their discretion determine, in order to comply with the order of, or to obtain the authorization or approval of, any such commission. In the event of such reduction of capitalization, the whole of such reduction shall be made in Common Stock and in the amount of stock trust certificates to be sold to the Purchase Syndicate and by it in turn offered to depositing stockholders of the three classes: the amounts of stock trust certificates deliverable, respectively, under the three classes of Purchase Warrants and Fully Paid Subscription Certificates being reduced by an equal percentage.

## Income Available for Contingent Interest Charge

The net income for any fiscal year as that term is defined in the accounting rules of the Interstate Commerce Commission from time to time in force, but without de-

duction in ascertaining net income, (1) for income transferred to other companies for capital purposes and (2) for interest on the Adjustment Mortgage Bonds and the In-[fol. 330] come Mortgage Bonds, shall be applicable to the payment of interest on the Adjustment Mortgage Bonds, and thereafter to the payment of interest on the Income Mortgage Bonds. The board of directors may first reserve therefrom such amount, within the limits hereinafter stated, as the board may in its discretion determine and the remainder shall constitute the Available Net Income for such year and shall, so far as necessary for the purpose, be applied to the payment of interest as aforesaid. For the purposes of determining the net income and the Available Net Income of the New Company for any fiscal year, which or any part of which may elapse before the mortgaged lines of railroad embraced in the Plan shall have been delivered to the New Company, the gross income of the receivers for such period shall be deemed gross income of the New Company for such period and shall be subject only to such deductions as would have been made if the mortgaged lines of railroad had been owned and operated by the New Company for such period and the new securities presently to be issued and delivered under the Plan had been issued and delivered July 1, 1915.

No amount shall be so reserved from the net income for any of the five fiscal years beginning with the establishment of the Voting Trust. The amount which may be so reserved in any fiscal year thereafter shall not exceed fifteen per cent. of the net income of the New Company for such fiscal year without deduction as aforesaid, nor in any event, \$660,000. The amounts so reserved and at any time unpaid shall not exceed, exclusive of interest, \$2,000,000 in the aggregate. No reservation from net income shall be made except during a period of ten years from and including the earliest fiscal year out of the net income for which, reservation shall be so made.

To the extent to which such reservation shall result in withholding from the Adjustment Mortgage Bonds any part of the full interest on the Adjustment Mortgage Bonds, the amount so withheld shall be carried to a fund to be designated Adjustment Mortgage Reserve Fund, and to the extent to which such deduction shall result also in with-

holding from the Income Mortgage Bonds payment of any part of the full interest on the Income Mortgage Bonds, the amount so withheld shall be carried to an account to be designated Income Mortgage Reserve Fund. From time to time, as any arrears of interest on the Adjustment Mortgage Bonds shall be paid out of subsequent Available Net Income an amount equal to so much of the arrears so paid as would otherwise be applicable to the payment of interest on the Income Mortgage Bonds for such year and is withheld therefrom, shall be transferred from the Ad-[fol. 331] justment Mortgage Reserve Fund to the Income Mortgage Reserve Fund. The amounts carried to such Funds shall respectively constitute and be carried as corporate liabilities in the corporate accounts and shall carry interest at the rate of five per cent. per annum with semi-annual rests (see page 10). The Income Mortgage Reserve Fund shall be distributable solely to the Income Mortgage Bonds but no such distribution shall be made at a time when interest on the Adjustment Mortgage Bonds shall be in arrears. Subject as aforesaid, the Income Mortgage Reserve Fund may be so distributed in the discretion of the board of directors in any amount and at any time. Such distribution shall be in addition to the full interest accruing on the Income Mortgage Bonds, except that such distribution may be made in any year in payment in whole or in part of the interest on the Income Mortgage Bonds for such year if and to the extent and only if and to the extent that the Available Net Income for such year shall be insufficient after payment thereout of all interest on the Adjustment Mortgage Bonds, to pay the full interest for such year on the Income Mortgage Bonds. The Adjustment Mortgage and the Income Mortgage may provide for interim payments of interest out of accruing Net Income.

No dividend shall be declared on the stock of the New Company of any class unless at the time of such declaration all amounts in either Reserve Fund shall be set aside for distribution to the Bonds for which such Funds shall be held, and no such dividend shall be paid unless the amounts so set aside shall have been paid to the Corporate Trustee under the proper Mortgage for payment not later than the next succeeding interest date to the Bonds secured by such mortgage. All amounts in both Reserve Funds must be

distributed to the bonds for which such amounts are held, not later than the interest day on such bonds next succeeding the expiration of the period of ten years from and including the earliest fiscal year out of the net income for which any reservation for either Reserve Fund shall have been made. Failure to make such payment shall constitute an event or default under the appropriate mortgage on the happening of which the principal of the bonds issued under such mortgage may become or be declared due.

### Particular Provisions in Mortgages

Provision will be made in the Prior Lien Mortgage and also in the Adjustment Mortgage and in the Income Mortgage to the effect.

[fol. 332] (a) that certified public accountants selected by the Corporate Trustees under the Prior Lien Mortgage, the Adjustment Mortgage and the Income Mortgage or a majority of them shall annually at the expense of the New Company audit the New Company's annual income statement and balance sheet and otherwise the accounts of the New Company as may be directed by such Corporate Trustees or a majority of them and in such detail as such Corporate Trustees or a majority of them may request, report thereon and on the New Company's financial condition, the report of such accountants to be filed in triplicate, a counterpart with the Corporate Trustees respectively, under the Prior Lien Mortgage, under the Adjustment Mortgage and under the Income Mortgage; and to be open to inspection by the holder of any bond issued under any of said mortgages;

(b) that the Corporate Trustees under the Prior Lien Mortgage, the Adjustment Mortgage and the Income Mortgage or a majority of them, may at any time appoint an expert in railroading to examine at the New Company's expense, the physical condition of the New Company's lines of railroad and equipment and otherwise as such Corporate Trustees or a majority of them may direct and in such detail as such Corporate Trustees or a majority of them may require, and report thereon and on the methods of operation; the report to be filed in triplicate, a counter-

part with the Corporate Trustees respectively under the Prior Lien Mortgage, under the Adjustment Mortgage and under the Income Mortgage, and to be open to inspection by any holder of any bond issued under any of said mortgages;

(c) that the new Company shall in every annual report state in detail all of the stocks, bonds and other securities of the New Company or of any subsidiary company of its System pledged or sold by the New Company or its respective subsidiary companies during such year, and the amounts in each case realized from every such pledge or sale;

(d) that equipment coming under the lien of the mortgage shall always be maintained in proper condition and that depreciation thereon be fully provided for through the purchase of new equipment or otherwise without the issue of additional bonds under such mortgage, in such manner that the value and aggregate capacity of said equipment at all times shall not be less than the maximum value and aggregate capacity of said equipment at any time under such mortgage, and that reports shall be made annually to the Corporate Trustees respectively under the Prior Lien [fol. 333] Mortgage, under the Adjustment Mortgage and under the Income Mortgage as to the value, capacity and condition of equipment, specifying by manufacturers' names and by marks and numbers all equipment under the lien of said mortgages and indicating particularly the marks and numbers of replacements and of the equipment so replaced; and that all new equipment as acquired, whether to replace old equipment or otherwise, shall be so marked as to identify it as equipment specified in such reports.

Provision may also be made in the New Mortgages for releases of any part of the System of the New Company or of any other property, and also permitting the New Company to such extent and under such restrictions as may be prescribed by the New Mortgages, to provide as it may determine for improvements, betterments and additions to the Kansas City, Fort Scott and Memphis Railway System for extensions and acquisitions and for equipment and to

deal with obligations of that System and for these purposes to issue and renew bonds under any existing mortgage of that System, and to issue new bonds of Kansas City, Fort Scott and Memphis Railway Company or of the New Company, secured on that System, or any part thereof, in priority to the existing lease of that System and to any lien of the New Mortgages on that System, but the aggregate prior mortgage indebtedness on that System shall not at any time exceed \$75,000,000.

#### Other Restrictions and Limitations

Provision is to be made that the New Company shall not create any additional mortgage, nor increase the amount of Preferred Stock authorized under the Plan, except in each instance after obtaining the consent of the holders of a majority of the whole amount of Preferred Stock outstanding, given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the Common Stock as shall be represented at such meeting, the holders of each class of stock voting separately. During the existence of the Voting Trust, similar consent of holders of like amounts of the respective classes of certificates of beneficial interest shall also be necessary for the purposes indicated.

Provision is also to be made that neither the New Company nor any company controlled by it, shall purchase any line of railroad or take a lease of any line of railroad (other in either case than industrial tracks) or guarantee any part of the principal of, or interest on, any obligation of or any dividend or other payment on the stock of, any other company or acquire more than twenty-five per cent in amount of the stock of any other company unless in each instance after obtaining the assent of the holders of a majority in amount of the outstanding stock present at a meeting of which not less than twenty days' notice specifying such business to be acted on thereat, shall have been given in the same manner as may be provided in the by-laws for the Annual Meeting.

### Voting Trust

The Preferred and Common Stock of the New Company issued in the reorganization will be assigned (but in the event hereinafter stated, subject to the prior pledge thereof) to the following Voting Trustees: Frederic W. Allen, James W. Lusk, Charles H. Sabin, James Speyer, Frederick Strauss, Eugene V. R. Thayer and Festus J. Wade, and be held by them, jointly, and their successors (under a Trust Agreement prescribing their powers and duties and the method of filling vacancies), for five years. The Voting Trustees will issue certificates of beneficial interest entitling the registered holders thereof to receive, at the time and on the terms and conditions stated in the Voting Trust Agreement, stock certificates for shares of the number and class specified in such certificates, and in the meanwhile to receive payments equal to the dividends received by the Voting Trustees upon shares of the number and class therein specified. In the event of the death or failure or refusal to serve of any person designated as a Voting Trustee, prior to the creation of the Voting Trust, the vacancy shall be filled by the Reorganization Managers.

If, in their unrestricted discretion, the Reorganization Managers shall so determine, the Preferred and Common Stock of the New Company issued in the reorganization may be pledged as additional security for the Prior Lien Bonds for five years, and for that purpose be vested in the Corporate Trustee under the Prior Lien Mortgage by agreement made or approved by the Reorganization Managers, under which the voting power on the stock so pledged shall be exercised by the Corporate Trustee under the Prior Lien Mortgage as from time to time directed by the Voting Trustees, or in the absence of such direction or in case of default in the payment of any instalment of interest on any Prior Lien Bond, as directed by a majority of the Corporate Trustees under the Prior Lien Mortgage, the Adjustment Mortgage and the Income Mortgage.

[fol. 335]

## Disposition of New Securities

## Prior Lien Mortgage Gold Bonds:

Series A Bonds delivered in partial exchange for St. Louis and San Francisco Railroad Company Refunding Mortgage Four Per Cent Gold Bonds General Lien 15-20 Year Five Per Cent Gold Bonds will carry interest from July 1, 1915.

Series A Bonds delivered in exchange or partial exchange for other securities will carry interest from July 1, 1916.

Series B Bonds will carry interest from January 1, 1916.

A. Series A, Four Per Cent, due 1950, redeemable at par and accrued interest to be used in partial exchange for—

	Amount outstanding	Amount of prior lien mortgage bonds, Series A, 4%, issued to partial exchange
St. Louis and San Francisco Railroad Company:		
Refunding Mortgage Four Per Cent Gold Bonds.....	\$68,557,000	\$51,417,750
General Lien 15-20 Year Five Per Cent Gold Bonds.....	69,384,000	17,346,000
Consolidated Mortgage Four Per Cent Gold Bonds.....	1,558,000	1,558,000
Southwestern Division First Mortgage Five Per Cent Gold Bonds .....	829,000	1,036,250
Central Division First Mortgage Four Per Cent Gold Bonds .....	145,000	181,250
Northwestern Division First Mortgage Four Per Cent Gold Bonds .....	47,000	58,750
St. Louis and San Francisco Railway Company:		
Trust Mortgage Five Per Cent Gold Bonds of 1887.....	439,000	548,750
Trust Mortgage Six Per Cent Gold Bonds of 1880.....	182,000	227,500
Missouri and Western Division First Mortgage Six Per Cent Gold Bonds.....	74,000	92,500
St. Louis, Wichita and Western Railway Company: First Mortgage Six Per Cent Gold Bonds..	304,000	380,000
St. Louis and San Francisco Railroad Company: Kansas City, Fort Scott and Memphis Railway Company Guaranteed Four Per Cent Preferred Stock Trust Certificates [fol. 336] Muskogee City Bridge Company: First Mortgage Five Per Cent Gold Bonds.....	15,000,000	11,250,000
	100,000	125,000
St. Louis, Memphis and Southeastern Railroad Company: First Mortgage Four Per Cent Gold Bonds .....	225,000	281,250

## Disposition of New Securities—Continued

	Amount outstanding	Amount of prior lien mortgage bonds, Series A, 4%, issued to partial exchange	
Chester, Perryville & Ste. Genevieve Railway Company: First Mort- gage Five Per Cent Gold Bonds.	140,000	175,000	
Fort Worth and Rio Grande Rail- way Company: First Mortgage Four Per Cent Gold Bonds.....	2,923,000	2,923,000	
Ozark & Cherokee Central Railway Company: First Mortgage Five Per Cent Gold Bonds (see page 26) .....	2,880,000	3,600,000	
Quanah, Acme and Pacific Railway Company: First Mortgage Six Per Cent Gold Bonds.....	1,758,000	2,197,500	
			\$93,398,500

B, Series B, Five Per Cent, due 1950, redeemable at 105  
and accrued interest:

Sold to Purchase Syndicate.....	\$25,000,000	
For the corporate purposes of the New Company.	6,811,500	
		\$31,811,500
		\$125,210,000

Cumulative Adjustment Mortgage Gold Bonds (carrying interest  
from July 1, 1915):

Series A, Six Per Cent, due 1955, redeemable at par and accrued interest,  
to be used in partial exchange for—

	Amount outstanding	Amount of 6% cumulative ad- justment mort- gage bonds issued in partial exchange	
St. Louis and San Francisco Rail- road Company:			
Refunding Mortgage Four Per Cent Gold Bonds.....	\$68,557,000	\$17,139,250	
General Lien 15-20 Year Five Per Cent Gold Bonds.....	69,384,000	19,658,568	

[fol. 337]

Kansas City, Fort Scott and Memphis Railway Company Guaranteed Four Per Cent Preferred Stock Trust Cer- tificates .....	15,000,000	3,750,000	\$40,547,818
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## Disposition of New Securities—Continued

Income Mortgage Gold Bonds (ranking for interest from July 1, 1915) :

Series A, Six Per Cent, due 1960, redeemable at par, and interest for proportionate part of current semi-annual interest period, to be used in partial exchange for—

	Amount outstanding	Amount of 6% income mort- gage bonds
St. Louis and San Francisco Rail- road Company:		
General Lien 15-20 Year Five Per Cent Gold Bonds.....	\$69,384,000	\$34,692,000
For adjustment of Outstanding Indebtedness, any bonds not so used to be available for the corporate purposes of the New Company.....		500,000
		<hr/> \$35,192,000
Preferred Stock, Six per cent :		
For adjustment of Outstanding Indebted- ness, any stock not so used to be avail- able for the corporate purposes of the New Company.....		<hr/> \$7,000,000
Common Stock :		
For sale to Purchase Syndicate.....		\$43,180,000
For adjustment of Outstanding Indebted- ness, any stock not so used to be avail- able for the corporate purposes of the New Company.....		5,300,000
		<hr/> \$48,480,000

Non-interest-bearing Script Exchangeable in Round Amounts Will be Issued for Fractional Amounts of new Bonds and Stock (Trust Certificates)

Existing securities	Each \$1,000 face value of existing securities to receive					
	Cash	Prior lien bonds, series A, 4%	Prior lien bonds, series B, 5%	Cumulative adjustment bonds, 6%	Income bonds, 6% certificates	Common stock (trust certificates)
St. Louis and San Francisco Railroad Company:						
Refunding Mortgage Four Per Cent Gold Bonds	See page 19	\$750	.....	\$250	.....	.....
General Lien 15-20 Year Five Per Cent Gold Bonds	.....	.....	.....	.....	.....	.....
For principal	See page 19	250	.....	250	\$500	.....
For interest (see page 19)	.....	.....	.....	33.33	.....	.....
Consolidated Mortgage Four Per Cent Gold Bonds	\$100	1,000	.....	.....	.....	.....
Southwestern Division First Mortgage Five Per Cent Gold Bonds	(a) 62.50	1,250	.....	.....	.....	.....
Central Division First Mortgage Four Per Cent Gold Bonds	(a) 35	1,250	.....	.....	.....	.....
Northwestern Division First Mortgage Four Per Cent Gold Bonds	(a) 35	1,250	.....	.....	.....	.....
St. Louis and San Francisco Railway Company:						
Trust Mortgage Five Per Cent Gold Bonds of 1887	(a) 62.50	1,250	.....	.....	.....	.....
Trust Mortgage Six Per Cent Gold Bonds of 1880	(a) 125	1,250	.....	.....	.....	.....

(a) Includes interest from last matured coupon to July 1, 1916, from which date the Prior Lien Mortgage Bonds to be delivered bear interest.

Table of Distribution—Continued  
 Non-interest-bearing Script Exchangeable in Round Amounts Will be Issued for Fractional Amounts of new Bonds and Stock  
 (Trust Certificates)

Existing securities	Each \$1,000 face value of existing securities to receive				
	Cash	Prior lien bonds, series A, 4%	Prior lien bonds, series B, 5%	Cumulative adjustment bonds, 6%	Common stock (trust 6% certificates)
<b>Missouri and Western Division First Mortgage</b>					
Six Per Cent Gold Bonds.....	(a) 125	1,250	.....	.....	.....
St. Louis, Wichita and Western Railway Company: First Mortgage Six Per Cent Gold Bonds.....	(a) 120	1,250	.....	.....	.....
St. Louis and San Francisco Railroad Company: [fol. 329] Kansas City, Fort Scott and Memphis Railway Company Guaranteed Four Per Cent Preferred Stock Trust Certificates.....	.....	750	.....	250	.....
Muskogee City Bridge Company: First Mortgage Five Per Cent Gold Bonds.....	50	1,250	.....	.....	.....
St. Louis, Memphis and Southeastern Railroad Company: First Mortgage Four Per Cent Gold Bonds.....	50	1,250	.....	.....	.....
Chester, Perryville & Ste. Genevieve Railway Com- pany: First Mortgage Five Per Cent Gold Bonds, Temiscot Railroad Company: First Mortgage Six Per Cent Gold Bonds.....	(c) 12.50	1,250	.....	.....	.....
Kennett & Osceola Railroad Company: First Mort- gage Six Per Cent Gold Bonds.....	Par and Int.	.....	.....	.....	.....
Southern Missouri and Arkansas Railroad Com- pany: First Mortgage Five Per Cent Gold Bonds, Fort Worth and Rio Grande Railway Company: First Mortgage Four Per Cent Gold Bonds.....	Par and Int. .....	.....	.....	.....	.....
	.....	1,000	.....	.....	.....

Ozark & Cherokee Central Railway Company: First Mortgage Five Per Cent Gold Bonds (see page 26) .....	(a)	17.50	1,250	.....	.....	.....
Quannah, Acme and Pacific Railway Company: First Mortgage Six Per Cent Gold Bonds .....	(c)	15	1,250	.....	.....	.....
St. Louis and San Francisco Railroad Company (subject to payment required by the Plan. See also page 22) :						
First Preferred Stock .....				(b) 580	.....	\$1,000
Second Preferred Stock .....				(b) 500	.....	000
Common stock .....				(b) 500	.....	820

(a) Includes interest from last matured coupon to July 1, 1916, from which date the Prior Lien Mortgage Bonds to be delivered bear interest.

(c) Interest from last matured coupon to July 1, 1916, from which date the Prior Lien Mortgage Bonds to be delivered bear interest.

Prior Lien Mortgage Bonds, Series A, delivered under the plan in partial exchange for St. Louis and San Francisco Railroad Company Refunding Mortgage Four Per Cent Gold Bonds, St. Louis and San Francisco Railroad Company General Lien 15-20 Year Five Per Cent Gold Bonds, are to carry interest at the rate of four per cent. per annum from July 1, 1915.

Prior Lien Mortgage Bonds, Series A, delivered under the Plan in exchange or partial exchange for other securities are to carry interest at the rate of four per cent. per annum from July 1, 1916.

Prior Lien Mortgage Bonds, Series B, delivered under the Plan are to carry interest at the rate of five per cent. per annum from January 1, 1916.

Interest on the Six Per cent. Cumulative Adjustment Mortgage Bonds, Series A, delivered under the Plan, will accrue from July 1, 1915, and from that date the Six Per Cent. Income Mortgage Bonds, Series A, delivered under the Plan, will rank for interest.

Holders of the following bonds (with coupons as stated) and of the following trust certificates who shall have complied with the conditions of the Plan and Agreement and shall be entitled to the benefits thereof will receive on the completion of the reorganization and surrender of their certificates of deposit in negotiable form, together with such certificates as may be required under the Federal Income Tax Laws, at the rate for each \$1,000 of principal, as follows:

St. Louis and San Francisco Railroad Company:

Refunding Mortgage Four Per cent. Gold Bonds (with coupon maturing July 1, 1914, and subsequent coupons).

\$750.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent.), carrying interest from July 1, 1915; \$250.00 Six Per Cent. Cumulative Adjustment Mortgage Bonds, Series A, and in Cash an amount equal to the interest instalments maturing July 1, 1914, January 1, 1915, and July 1, 1915, with interest at six per cent. per annum from the respective [fol. 341] dates of maturity to the date set by the Reorganization Managers for payment; but where such interest has

been received by holders of certificates of deposit and noted on their certificates, to be paid to the holders of such coupons and claims for interest.

St. Louis and San Francisco Railroad Company:

General Lien 15-20 Year Five Per cent Gold Bonds (with coupon maturing May 1, 1914, and subsequent coupons).

\$250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1915; \$250.00 Six Per Cent Cumulative Adjustment Mortgage Bonds, Series A; \$33.33 Six Per Cent Cumulative Adjustment Mortgage Bonds, Series A, in adjustment of interest at Five Per Cent on \$1,000 principal from November 1, 1914, to July 1, 1915; \$500.00 Six Per Cent Income Mortgage Bonds, Series A, and in Cash an amount equal to the interest instalments maturing May 1, 1914, and November 1, 1914, with interest at six per cent per annum from the respective dates of maturity to the date set by the Reorganization Managers for payment; but subject to the deduction of amounts advanced to holders of certificates of deposit in respect of the interest instalment of May 1, 1914, and noted on certificates of deposit, with interest.

St. Louis and San Francisco Railroad Company:

Consolidated Mortgage Four Per Cent Gold Bonds (with coupon maturing January 1, 1917, and subsequent coupons).

\$1,000.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$100.00 Cash.

St. Louis and San Francisco Railroad Company:

Southwestern Division First Mortgage Five Per Cent Gold Bonds (with coupon maturing October 1, 1916, and subsequent coupons).

[fol. 342] \$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$62.50 Cash.

St. Louis and San Francisco Railroad Company:

Central Division First Mortgage Four Per Cent Gold Bonds (with coupon maturing October 1, 1916, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$35.00 Cash.

St. Louis and San Francisco Railroad Company:

Northwestern Division First Mortgage Four Per Cent Gold Bonds (with coupon maturing October 1, 1916, and subsequent coupons); \$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$35.00 Cash.

St. Louis and San Francisco Railway Company:

Trust Mortgage Five Per Cent Gold Bonds of 1887 (with coupon maturing October 1, 1916, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$62.50 Cash.

St. Louis and San Francisco Railway Company:

Trust Mortgage Six Per Cent Gold Bonds of 1880 (with coupon maturing August 1, 1916, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$125.00 Cash.

[fol. 343] St. Louis and San Francisco Railway Company:

Missouri and Western Division First Mortgage Six Per Cent Gold Bonds (with coupon maturing August 1, 1916, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$125.00 Cash.

St. Louis, Wichita and Western Railway Company:

First Mortgage Six Per Cent Gold Bonds (with coupon maturing September 1, 1916, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$125.00 Cash.

[fol. 344] Reorganization of St. Louis and San Francisco  
Railroad Company

Modification of Plan and Agreement, Dated November 1,  
1915

The undersigned, J. & W. Seligman & Co., and Speyer & Co., as Reorganization Managers under the Plan and Agreement dated November 1, 1915, for the Reorganization of St. Louis and San Francisco Railroad Company, hereby modify said Plan by substituting in the second line of the fourth paragraph on page 21 of said plan, for the words "October 1, 1916" the words "January 1, 1917" and by striking out the last line of said paragraph as so modified will read as follows:

Chester, Perryville & Ste. Genevieve Railway Company:

First Mortgage Five Per Cent Gold Bonds (with coupon maturing January 1, 1917, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916, and by striking out the letter and figures "(c) \$12.50" in the first column on page 18 of said Plan opposite the words "Chester, Perryville & Ste. Genevieve Railway Company: First Mortgage Five Per Cent Gold Bonds."

In witness whereof said Reorganization Managers have subscribed this instrument as of the 5th day of April, 1916.

J. & W. Seligman & Co., Speyer & Co., Reorganization Managers.

[fol. 345] St. Louis and San Francisco Railroad Company:

Kansas City, Fort Scott and Memphis Railway Company Guaranteed Four Per Cent Preferred Stock Trust Certificates.

\$750.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$250.00 Six Per Cent Cumulative Adjustment Mortgage Bonds, Series A, carrying interest from July 1, 1916.

Muskogee City Bridge Company:

First Mortgage Five Per Cent Gold Bonds (with coupon maturing January 1, 1917, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$50.00 Cash.

St. Louis, Memphis and Southeastern Railroad Company:

First Mortgage Four Per Cent Gold Bonds (with coupon maturing January 1, 1917, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$50.00 Cash.

Chester, Perryville & Ste. Genevieve Railway Company:

First Mortgage Five Per Cent Golds Bonds (with coupon maturing October 1, 1916, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$12.50 Cash.

Pemiscot Railroad Company:

First Mortgage Six Per Cent Gold Bonds.

Par and accrued interest to date of payment, in cash.  
[fol. 346] Kennett & Osceola Railroad Company:

First Mortgage Six Per Cent Gold Bonds (with coupon maturing December 1, 1916, and subsequent coupons).

Par and accrued interest to date of payment, in cash.

Southern Missouri and Arkansas Railroad Company:

First Mortgage Five Per Cent Gold Bonds (with coupon maturing January 1, 1917, and subsequent coupons).

Par and accrued interest to date of payment, in cash.

Fort Worth and Rio Grande Railway Company:

First Mortgage Four Per Cent Gold Bonds (with coupon maturing January 1, 1917, and subsequent coupons).

\$1,000.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916.

Quanah, Acme and Pacific Railway Company:

First Mortgage Six Per Cent Gold Bonds (with coupon maturing October 1, 1916, and subsequent coupons).

\$1,250.00 Prior Lien Mortgage Bonds, Series A (Four Per Cent), carrying interest from July 1, 1916; \$15.00 Cash.

St. Louis and San Francisco Railroad Company:

First Preferred Stock.

Second Preferred Stock.

Common Stock.

No holder of stock will be entitled to deposit his stock under the Plan or to receive a certificate of deposit therefor without making at the time of deposit the required payment of \$5 per share. Any holder of stock may, at the time of deposit thereof under the Plan, elect to prepay the entire purchase price of the securities which such holder shall be entitled to purchase under the Plan and such election will be appropriately noted on his certificate of deposit.

Holders of certificates of deposit for stock will be entitled to receive upon the completion of the reorganization and on [fol. 347] the surrender of their certificates of deposit, either Purchase Warrants of Fully Paid Subscription Certificates, both of which will be issued by Guaranty Trust Company of New York and will be delivered by the Reorganization Managers on behalf of the Purchase Syndicate (see page 27.) Each holder of a certificate of deposit for stock bearing notation of election to prepay the entire purchase price of the New Securities which such holder shall be entitled to purchase, will, upon making payment of the entire purchase price at the time and otherwise as hereafter stated, together with the interest accrued on the Prior Lien Mortgage Bonds, be entitled to receive a Fully Paid Subscription Certificate; each holder of a certificate of deposit for stock not bearing notation of such election, will be entitled to receive a Purchase Warrant. If the Reorganization Managers shall, in carrying out the Plan, have acquired, for the purposes of the reorganization, all the outstanding stock and First Mortgage Six Per Cent Gold

Bonds of New Mexico and Arizona Land Company, the Reorganization Managers will, on the completion of the reorganization and on surrender of their certificates of deposit, deliver to the respective holders of such certificates of deposit, stock of the recapitalized Land Company (see page 7) to a par amount which shall be such proportion of \$500,000 as the par amount of deposited stock represented by such certificates of deposit shall bear to the aggregate par amount of stock deposited under the Plan. For fractional interests scrip may be delivered. So far as the reorganization or the issue of securities or stock under the Plan may be subject to the approval or authorization of any public utilities or public service commission in any state in which any part of the property is situated or in which the Reorganization Managers may in their discretion determine to organize the New Company, or of any other commission having authority in the premises, the amount of capitalization to be issued in the reorganization may be reduced by such amount as the Reorganization Managers may in their discretion determine, in order to comply with the order of, or to obtain the authorization or approval of, any such commission. In the event of such reduction of capitalization, the whole of such reduction shall be made in Common Stock and in the amount of stock trust certificates to be sold to the Purchase Syndicate, and by it in turn offered to depositing stockholders of the three classes: the amounts of stock trust certificates deliverable, respectively, under the three classes of Purchase Warrants and Fully Paid Subscription Certificates being reduced by an equal percentage.

[fol. 348] The amounts of Prior Lien Mortgage Bonds and Common Stock (trust certificates) to be specified in such Purchase Warrants shall be at the following rates per share of stock represented by the surrendered certificates of deposit, subject as to the amount of Common Stock (trust certificates) to reduction as stated:

#### First Preferred Stock:

\$50 Prior Lien Mortgage Bonds, Series B (Five Per Cent), or cash at 85% flat for bonds withdrawn by the Purchase Syndicate and therefore not delivered; \$100 Common Stock (trust certificates).

### Second Preferred Stock:

\$50 Prior Lien Mortgage Bonds, Series B (Five Per Cent), or cash at 85% flat for bonds withdrawn by the Purchase Syndicate and therefore not delivered; \$90 Common Stock (trust certificates).

### Common Stock:

\$50 Prior Lien Mortgage Bonds, Series B (Five Per Cent), or cash at 85% flat for bonds withdrawn by the Purchase Syndicate and therefore not delivered; \$82 Common Stock (trust certificates).

The Purchase Warrants will certify that on payment on the date therein specified, which is to be the date of maturity of the loan to be made by the Loan Syndicate (see page 28), of the sums specified in such Purchase Warrant, which shall be at the rate of \$45 for each share of stock represented by the surrendered certificate of deposit, said Trust Company on surrender of such Purchase Warrant and on payment of the accrued interest on the Prior Lien Mortgage Bonds delivered will deliver to the bearer of such Purchase Warrant, the Prior Lien Mortgage Bonds and Common Stock (trust certificates) therein specified or will, in lieu of the delivery of any or all of such Prior Lien Mortgage Bonds, pay in cash at 85% flat for bonds not delivered. Prior Lien Mortgage Bonds deliverable under the Purchase Warrants will be delivered carrying all unmatured coupons. Holders of Purchase Warrants will not be entitled to the interest on the Prior Lien Mortgage Bonds maturing on or prior to the time of their delivery. [fol. 349] Failure to pay the purchase price when payable will forfeit all rights in respect of bonds and stock (trust certificates) specified in the Purchase Warrant and all rights under the Purchase Warrant and under the Plan.

The amounts of Prior Lien Mortgage Bonds and Common Stock (trust certificates) to be specified in the Fully Paid Subscription Certificates shall be at the following rates per share of stock represented by the surrendered certificates of deposit bearing notation of election to prepay the entire purchase price, subject as to the amount of Common Stock (trust certificates) to reduction as stated:

**First Preferred Stock:**

\$50 Prior Lien Mortgage Bonds, Series B (Five Per Cent); \$100 Common Stock (trust certificates).

**Second Preferred Stock:**

\$50 Prior Lien Mortgage Bonds, Series B (Five Per Cent); \$90 Common Stock (trust certificates).

**Common Stock:**

\$50 Prior Lien Mortgage Bonds, Series B (Five Per Cent); \$82 Common Stock (trust certificates).

The Fully Paid Subscription Certificates will certify that the entire purchase price therein specified has been paid and that on and after the date therein specified, which is to be the date of maturity of the loan to be made by the Loan Syndicate (see page 28), the bearer will be entitled on surrender of such Fully Paid Subscription Certificates, to the delivery of Prior Lien Mortgage Bonds, Series B (Five Per Cent) and Common Stock (trust certificates), to the amount specified in such Fully Paid Subscription Certificates and meantime on presentation thereof for proper notation thereon, to payment of the accruing interest collected on the Prior Lien Mortgage Bonds called for by such Fully Paid Subscription Certificates or to the delivery of the coupons therefor. With the consent of the Reorganization Managers, deliveries may be earlier made to holders of Fully Paid Subscription Certificates.

Holders of certificates of deposit bearing notation of election to prepay the entire purchase price must make such payment within such period as may be fixed by the Reorganization Managers for the purpose. Failure to make such payments within the period so fixed by the Reorganization Managers will forfeit all rights to purchase bonds and stock (trust certificates) and all rights of purchase under the Plan as well as the deposited stock represented by such certificates of deposit and will terminate all rights of the holders of such certificates of deposit, and such certificates of deposit shall become void.

## Adjustment of Other Debt

In connection with the Plan, agreements substantially to the following effect have been made or, it is contemplated, will be made with holders of the Secured Debt hereinafter mentioned, through their respective Committees, for the adjustment and discharge of the indebtedness and liabilities of St. Louis and San Francisco Railroad Company on or in respect to the class of security specified (including unpaid coupons and interest). The Reorganization Managers may in their discretion at such time or times as they may determine, call for deposit of any of the securities consisting of the Secured Debt or provide otherwise for the method of their participation in the Plan. The terms hereinafter stated are on the basis of the adjustment of the entire secured debt of the specified class and are exclusive of the compensation and expenses of any such Committee. The amounts payable and deliverable by the Reorganization Managers in respect of securities of any class approving and accepting terms of settlement through a Committee, will be paid and delivered in block to such Committee, the Reorganization Managers assuming no responsibility in respect of the disposition or distribution thereof by such Committee. The arrangement in every case will be conditional on acceptance and approval by holders of the particular class of security to an amount satisfactory to the Reorganization Managers and to the Plan and Agreement becoming effective and being consummated, and all payments and deliveries by the Reorganization Managers are to be made on the consummation of the Plan.

A. \$28,582,000 St. Louis and San Francisco Railroad Company, New Orleans, Texas and Mexico Division First Mortgage 4½% and 5% Gold Bonds (with coupon maturing September 1, 1913, and subsequent coupons).

The Reorganization Managers

1. to pay and to deliver

(a) \$500,000 in cash,

[fol. 351] (b) \$500,000 Six Per Cent Income Mortgage Bonds, Series A,

(c) \$636,800 Six Per Cent Preferred Stock (trust certificates);

2. If and to the extent acquired by the Reorganization Managers under the Plan to cancel (a) the \$480,000 Equipment Notes, Series A, of the New Orleans, Texas and Mexico Railroad Company held under the General Lien Mortgage; and (b) the notes of the New Orleans, Texas and Mexico Railroad Company and its indebtedness to St. Louis and San Francisco Railroad Company now pledged to secure the Two Year Six Per Cent Secured Gold Notes of said St. Louis and San Francisco Railroad Company, and any other indebtedness of the New Orleans, Texas and Mexico Railroad Company to St. Louis and San Francisco Railroad Company and any indebtedness of the St. Louis, Brownsville and Mexico Railway Company to St. Louis and San Francisco Railroad Company now constituting treasury assets of said Railroad Company; and if and to the extent acquired by the Reorganization Managers under the Plan, to surrender to the reorganized New Orleans, Texas and Mexico Company for cancellation, \$454,000 New Orleans, Texas and Mexico Division First Mortgage 5% Gold Bonds (Certificates of Deposit) now constituting treasury assets (but in part pledged) of the St. Louis and San Francisco Railroad Company;

3. If and to the extent acquired by the Reorganization Managers under the Plan, to transfer to the reorganized New Orleans, Texas and Mexico Company (a) the securities and stock of San Benito and Rio Grande Valley Railway Company now pledged to secure the Two Year Six Per Cent Secured Gold Notes of St. Louis and San Francisco Railroad Company and any other securities and stock of said San Benito and Rio Grande Valley Railway Company now constituting treasury assets of St. Louis and San Francisco Railroad Company and (b) the stock of the New Orleans, Texas and Mexico Railroad Company now pledged to secure said Notes and any other stock of said Railroad Company now constituting treasury assets of St. Louis and San Francisco Railroad Company.

The New Company to undertake that the Frisco Refrigerator Company shall continue to and including September 15, 1923, the existing lease to said Refrigerator Company of various refrigerator cars, part of the equipment em-

braced in the Equipment Trust Agreement of the New Orleans, Texas and Mexico Railroad Company, dated September 15, 1911, and that the instalment of rents payable under said lease due or to become due shall be promptly paid when due and that all the covenants thereof on the part of said Refrigerator Company shall be duly performed; an undertaking to be given by the reorganized New Orleans, Texas and Mexico Company that the equipment embraced in such lease, on the termination of such lease, will be transferred to the New Company or to said Refrigerator Company.

The liability of St. Louis and San Francisco Railroad Company to be terminated on the outstanding loan of \$200,000 secured by certain terminal properties in New Orleans which have been judicially declared to have been purchased with funds of the New Orleans, Texas and Mexico Railroad Company and, subject to the payment of such loans, to be embraced in the New Orleans, Texas and Mexico Division First Mortgage.

B. \$2,250,000 St. Louis and San Francisco Railroad Company Two-Year Five Per Cent Secured Gold Notes (with coupon maturing June 1, 1913), secured by the pledge of

\$2,500,000 St. Louis and San Francisco Railroad Company, Chicago and Eastern Illinois Railroad Company Stock Trust Certificates,

\$1,490,000 Kansas City, Fort Scott and Memphis Railway Company Guaranteed Four Per Cent Preferred Stock Trust Certificates.

\$100,000 St. Louis and San Francisco Railroad Company General Lien 15-20 Year Five Per Cent Gold Bonds.

1. The trust agreement securing the Notes to be foreclosed and pledged securities, all of which are dealt with under the Plan, to be made subject to the Plan if acquired by the Reorganization Managers or Noteholders' Committee.

2. The Reorganization Managers to deliver

\$834,795.00 Six Per Cent Preferred Stock (trust certificates),

\$556,582.50 Common Stock (trust certificates).

C. \$2,600,000 St. Louis and San Francisco Railroad Company Two Year Six Per Cent Secured Gold Notes (with

coupon maturing September 1, 1913, and subsequent coupons).

[fol. 353] 1. The trust agreement securing the Notes to be foreclosed and the securities acquired by the Noteholders' Committee; the pledged securities other than the pledged Preferred Stock of the Kirby Lumber Company to be transferred to the Reorganization Managers.

2. The Reorganization Managers to pay and to deliver \$270,000 in cash,

\$1,350,000 Six Per Cent Preferred Stock (trust certificates).

D. St. Louis and San Francisco Railroad Company Trust Certificates for Preferred Stock Chicago and Eastern Illinois Railroad Company, \$12,153,750; Common Stock Chicago and Eastern Illinois Railroad Company, \$16,944,500.

1. The outstanding trust certificates for Chicago and Eastern Illinois Railroad Company stock to be surrendered pursuant to the terms thereof and of the trust agreements securing them in exchange for the stock of the Chicago and Eastern Illinois Railroad Company represented by the trust certificates surrendered.

2. The Reorganization Managers to deliver

in respect of Trust Certificates for Chicago and Eastern Illinois Railroad Company Preferred Stock so surrendered at the rate of each share of Preferred Stock represented by the surrendered Trust Certificates,

\$18.00 Six Per Cent Preferred Stock (trust certificates),

\$2.50 Common Stock (trust certificates);

in respect of Trust Certificates for Chicago and Eastern Illinois Railroad Company Common Stock so surrendered at the rate for each share of Common Stock represented by the surrendered Trust Certificates,

\$30.00 Six Per Cent Preferred Stock (trust certificates),

\$4.25 Common Stock (trust certificates).

E. \$2,880,000 Ozark & Cherokee Central Railway Company First Mortgage Five Per Cent Gold Bonds.

[fol. 354] 1. These bonds are to be transferred to the Reorganization Managers.

2. The Reorganization Managers to pay in money one-half of one per cent. of the amount of said First Mortgage Bonds and at their election either (a) to deliver Prior Lien Mortgage Bonds, Series A, Four Per Cent. to the amount of 125 per cent. of said First Mortgage Bonds or, (b) to deliver Prior Lien Mortgage Bonds, Series A, Four Per Cent. to the Amount of 100 per cent. of First Mortgage Bonds and to pay in money 20 per cent. of the amount of said First Mortgage Bonds, and in either case interest to be adjusted.

F. \$14,000,000 New Orleans Terminal Company Guaranteed First Mortgage Four Per Cent. Gold Bonds.

Guaranteed both as to principal and interest, jointly and severally by Southern Railway Company and St. Louis and San Francisco Railroad Company.

1. The Southern Railway Company which has taken over the stock of the Terminal Company formerly held by St. Louis and San Francisco Railroad Company to release that Company and to cause the Terminal Company to release it, from all indebtedness or liability now existing or which may hereafter arise on the various agreements with respect to the properties and stock of the Terminal Company or on said guaranty.

2. The Reorganization Managers to pay and to deliver \$116,000 in cash, \$650,000 Six Per Cent. Preferred Stock (trust certificates).

#### G. Unsecured Debt.

It is intended to make adjustments with holders of unsecured debt when the establishment of claims under the general creditors bill shall in the judgment of the Reorganization Managers have proceeded to a point making it practicable to do so.

The Reorganization Managers may make adjustments of indebtedness. They may, in their discretion, use any of the securities issuable in the Reorganization and not required for other specified purposes or procure the issue of additional amounts of securities of any class or character under the Plan. All statements of capitalization in the Plan omit consideration of any additional securities which may be issued or used for this purpose.

## [fol. 355]      Estimated Cash Requirements

Equipment Trust Obligations maturing after July 1, 1916, and prior to July 2, 1917....	\$1,952,752
\$54,000 Pemiscot Railroad Company, First Mortgage Six Per Cent Gold Bonds .....	54,000
\$65,000 Kennett & Osceola Railroad Company First Mortgage Six Per Cent Gold Bonds ..	65,000
\$4,500 Southern Missouri and Arkansas Railroad Company First Mortgage Five Per Cent Gold Bonds .....	4,500
July 1, 1914, January 1, 1915, and July 1, 1915, interest on the Refunding Mortgage Bonds	4,113,420
May 1, 1914, and November 1, 1914, interest on the General Lien Bonds .....	3,469,200
Interest at 6% per annum on foregoing interest instalments from date of maturity to date of actual payment, calculated as of July 1, 1916 .....	769,167
Cash payments in connection with exchange of underlying bonds .....	310,650
Payments in connection with adjustment of Secured Debt, Judgments and Preferred Claims (estimated) .....	2,000,000
January 1, 1916, and July 1, 1916, interest on \$68,763,750 Prior Lien Mortgage Bonds, Series A, deliverable in partial exchange for Refunding Mortgage Bonds and for General Lien Bonds pursuant to the Plan .....	2,750,550
Commissions to Purchase Syndicate .....	1,000,000
Commissions to Loan Syndicate .....	675,000
Organization, franchise and other taxes, including stamps .....	1,400,000
Expenses of Committees and other representatives of existing securities, including their compensation .....	1,000,000
Other reorganization expenses, including the compensation of the Reorganization Managers, legal expenses and miscellaneous expenses .....	1,258,000
Improvements and betterments, additions, acquisitions, including Equipment, and working capital for New Company .....	4,177,761
	<hr/>
	\$25,000,000

[fol. 356] The Receivers estimate that on July 1, 1916, the cash in hand, after providing funds for payment of Equipment Trust Obligations maturing up to July 2, 1916, inclusive, of interest on securities paid regularly during the receivership, and of the cost of current improvements, will be not less than the sum of \$3,193,000, the greater part of which should be available for the corporate purposes of the New Company.

#### Provision for Cash Requirements

For the purpose of meeting the estimated cash requirements of the Plan, Messrs. Speyer & Co., J. & W. Seligman & Co. Guaranty Trust Company of New York and Lee, Higginson & Co. have undertaken to form a Purchase Syndicate, of which they will be Syndicate Managers. The Purchase Syndicate, among other things, will

##### (a) purchase

\$25,000,000 Prior Lien Mortgage Bonds, Series B (Five Per Cent),

\$43,180,000 Common Stock (trust certificates),

for the sum of \$25,000,000 (and accrued interest on the bonds, against which will be credited the amounts paid by stockholders as a condition of participating in the Plan, and will offer the Prior Lien Mortgage Bonds and Common Stock (trust certificates) so purchased, to the extent and on the terms stated in the Plan, to depositing holders of stock who shall have complied with the conditions of the Plan;

(b) purchase at the request of the reorganization Managers additional Prior Lien Mortgage Bonds, to an amount not exceeding in the aggregate \$5,000,000.

No provision has been made for underwriting the cash required for payment to holders of non-assenting Refunding Mortgage Bonds and General Lien Bonds of their distributive share in the proceeds of the foreclosure sale, as in the judgment of the Reorganization Managers, the failure to deposit undeposited bonds has been in the main due to existing conditions in Europe, where such non-deposited

bonds are mainly held, but it is intended on the completion of Reorganization, to set aside under such restrictions as the Reorganization Managers shall deem proper, the new securities and cash to which under the Plan, holders of non-deposited Refunding Mortgage Bonds and General Lien [fol. 357] Bonds would be entitled if deposited under the Plan, if deemed practicable until the expiration of one year after the conclusion of peace by treaty, to be deliverable on the terms stated in the Plan, at any time during such period, to holders of such bonds who may desire to avail themselves of the benefits of the Plan and shall give satisfactory reason for their previous inability to deposit the same under the Plan; the securities and cash deliverable in respect of any non-deposited bond to be available for providing, if necessary, the moneys required to pay the cash distributive share of such bond. Such Refunding Mortgage Bonds deposited under the Agreement of June 20, 1914, and such General Lien Bonds deposited under the Agreement of May 28, 1913, as may be withdrawn from said respective agreements, will not be entitled to avail themselves of such provision.

Guaranty Trust Company of New York has undertaken to form a Loan Syndicate, of which it will be Syndicate Manager, which among other things will, against the pledge by the Purchase Syndicate of such of the Prior Lien Mortgage Bonds and Common Stock (trust certificates), specified in subdivisions (a) above, as shall not be purchased and paid for in full by depositing stockholders, and reserved against Fully Paid Subscription Certificates, agree to advance to the Purchase Syndicate, up to ninety per cent of the face amount of said bonds so pledged. The Loan Syndicate will agree to make, for account of the Purchase Syndicate, deliveries in accordance with the terms of the Purchase Warrants, to holders thereof complying with the terms of such Purchase Warrants.

The Reorganization Managers for their services shall be entitled to compensation in such usual amount as shall be determined to be fair by the persons, or a majority of them, who at the time of such determination are respectively Presidents of The New York Trust Company, Columbia Trust Company and The Equitable Trust Company of New York.

The compensation and commissions to be paid to the Reorganization Managers and the respective Syndicates are to be paid as part of the expenses of the reorganization. The Reorganization Managers may become participants in either syndicate.

[fols. 358 & 359] Comparative Tables Showing Capitalization, Fixed and Contingent Interest Charges, Earnings, Average Maintenance Charges, and Mileage

The statements and figures in the accompanying Tables, as well as elsewhere throughout the Plan, have been furnished by the Receivers or by officers of the Railroad Company.

## A. Capitalization and Interest Charges of Present Company as of June 30, 1915

The following table shows the total amount of Receivers' Certificates, Bonds, Notes, Trust Certificates, Equipment Trust Obligations, and Guaranteed Securities and Stock in hands of public (with the fixed charges thereon) dealt with under the Plan excluding Unsecured Debt, floating claims, etc., and includes the First Mortgage Bonds of the Quanah, Acme and Pacific Railway Company, although not operated as part of the System, but excludes the stock of that Company.

	Annual interest charge or guaranty
*\$3,000,000 Receivers' Certificates .....	\$180,000
+4,626,636 Equipment Trust Certificates (maturing prior to July 2, 1917, for which cash provided so far as not paid by Re- ceivers) about .....	231,300
68,557,000 Refunding Mortgage 4% Gold Bonds .....	2,742,280
69,284,000 General Lien 15-20 Year 5% Gold Bonds in hands of public .....	3,464,200
1,558,000 Consolidated Mortgage 4% Gold Bonds .....	62,320
829,000 Southwestern Division 1st Mortgage 5% Gold Bonds .....	41,450
145,000 Central Division 1st Mortgage 4% Gold Bonds .....	5,800
47,000 Northwestern Division 1st Mortgage 4% Gold Bonds .....	1,880
2,250,000 Two-Year Five Per Cent. Secured Gold Notes .....	112,500
2,600,000 Two-Year Six Per Cent. Secured Gold Notes .....	156,000
439,000 St. Louis and San Francisco Railway Company Trust Mortgage 5% Gold Bonds of 1887 .....	21,950

182,000	St. Louis and San Francisco Railway Company Trust Mortgage 6% Gold Bonds of 1880	10,920
+79,000	Missouri and Western Division 1st Mortgage 6% Gold Bonds	4,740
304,000	St. Louis Wichita and Western Railway Company 1st Mortgage 6% Gold Bonds	18,240
13,510,000	Kansas City, Ft. Scott and Memphis Railway Company 4% Preferred Stock Trust Certificates in hands of public	540,400
100,000	Muskogee City Bridge Company 1st Mortgage 5% Gold Bonds	5,000
225,000	St. Louis, Memphis and Southeastern Railroad Company 1st Mortgage 4% Gold Bonds in hands of public	9,000
140,000	Chester, Perryville & Ste. Genevieve Railway Company 1st Mortgage 5% Gold Bonds	7,000
54,000	Pemiscot Railroad Company 1st Mortgage 6% Gold Bonds	3,240
65,000	Kennett & Osceola Railroad Company 1st Mortgage 6% Gold Bonds	3,900
[fol. 361]		
4,500	Southern Missouri and Arkansas Railroad Company 1st Mortgage 5% Gold Bonds	225

\*Paid January 2, 1916.

†\$2,673,884 principal amount paid or to be paid on or before July 1, 1916.

‡\$5,000 of bonds have been redeemed by sinking fund.

## Capitalization and Fixed Charges—Continued

	Annual interest charge or guaranty
Fort Worth and Rio Grande Railway Company 1st Mortgage 4% Gold Bonds	116,920
Ozark & Cherokee Central Railway Company 1st Mortgage 5% Gold Bonds	144,000
Quannah, Acme and Pacific Railway Company 1st Mortgage 6% Gold Bonds	105,480
New Orleans, Texas and Mexico Division 1st Mortgage 5% Gold Bonds	1,156,400
New Orleans, Texas and Mexico Division 1st Mortgage 4½% Gold Bonds (French Series)	225,000
New Orleans, Terminal Company 1st Mortgage 4% Gold Bonds (being half of issue)	280,000
Chicago and Eastern Illinois Preferred Stock Trust Certificates	486,150
Chicago and Eastern Illinois Common Stock Trust Certificates in hands of public	577,780
<hr/>	<hr/>
St. Louis and San Francisco Railroad Company First Preferred Stock (includes \$6,535.10 stock in Treasury).	\$10,714,075
St. Louis and San Francisco Railroad Company Second Preferred Stock (includes \$53 stock in Treasury).	
<hr/>	<hr/>
\$237,286,386	
\$5,000,000	
16,000,000	

St. Louis and San Francisco Railroad Company Common Stock  
(includes \$7,649.60 stock in Treasury).

29,000,000  

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\$287,286,386

For comparison with the table on next page, there should be added to the above:

Undisturbed Securities and Rentals

\$9,484,000	St. Louis and San Francisco Railway Company General Mortgage 5% and 6% Gold Bonds maturing 1931	\$511,010 00
5,306,000	Equipment Trust Certificates maturing after July 1, 1917 (about)	265,000 00
	Sundry Rentals and Sinking Funds (year 1915)	579,119 36

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\$302,076,386

Total.

The fixed charges in connection with the Kansas City, Fort Scott and Memphis Railway Company Leasehold and Auxiliary Companies' Bonds, Rentals, Sinking Fund and Miscellaneous (details as per page 31) amount to (year 1915)

\$2,817,120 32	
<hr/>	\$4,172,249 68
	<hr/>
	\$14,886,324 68

Total fixed charges

## Capitalization and Fixed Charges—Continued

[fol. 362]

## B. Capitalization and Interest Charges of New Company

Upon retirement of the foregoing \$287,286,386 of securities, dealt with under the Plan, there will have been issued in respect thereof, or in connection with the extinguishment of liability thereon and for Cash Requirements of the Plan which includes provision for working capital, improvements, etc., the following new securities:

## Fixed Charge Obligations

	Annual fixed interest charge
\$93,398,500 Prior Lien Mortgage Bonds, Series A, 4% .....	\$3,735,940.00
25,000,000 Prior Lien Mortgage Bonds, Series B, 5%, sold to provide cash requirements of the Plan .....	1,250,000.00
leaving undisturbed with bonds reserved under the Prior Lien Mortgage to take up same at or before maturity:	
9,484,000 St. Louis & San Francisco Railway Company General Mortgage 5% and 6% Gold Bonds maturing 1931 ..	511,010.00
5,306,000 Equipment Trust Certificates maturing after July 1, 1917 (about) .....	265,000.00
Sundry Rentals and Sinking Funds (year 1915) .....	579,119.36
	<hr/>
	\$6,341,069.36

The Fixed Charges in connection with the Kansas City, Fort Scott and Memphis Railway Company Leasehold and Auxiliary Companies' Bonds, Rentals, Sinking Fund and Miscellaneous are as follows:

\$1,000,000	Birmingham Belt Railroad Company First Mortgage 4% Gold Bonds	40,000 00
25,835,000	Kansas City, Ft. Scott and Memphis Railway Company Refunding Mortgage 4% Gold Bonds	1,033,400 00
13,736,000	Kansas City, Fort Scott and Memphis Railroad Company Consolidated Mortgage 6% Bonds	824,160 00
390,000	Kansas and Missouri Railroad Company First Mortgage 5% Bonds	19,500 00
1,606,000	Current River Railroad Company First Mortgage 5% Bonds	80,300 00
3,000,000	Kansas City and Memphis Railway and Bridge Company First Mortgage 5% Gold Bonds	150,000 00
3,323,390	Kansas City, Memphis and Birmingham Railroad Company General Mortgage 4% Bonds	132,935 60
5,923,280	Kansas City, Memphis and Birmingham Railroad Company Income 5% Bonds	296,164 00

## Capitalization and Fixed Charges—Continued

[fols. 363 &amp; 364]

	Annual fixed interest charge
Rentals and Sinking Fund under Kansas City, Ft. Scott and Memphis Lease, and miscellaneous (year 1915) . . . . .	240,660.72
	<u>\$2,817,120.32</u>
Total Fixed Interest Charges of New Company	<u>\$9,158,189.68</u>

and

## Contingent Charge Obligations

40,547,818	6% Cumulative Adjustment Mortgage Bonds . . . . .	\$2,432,869.08
35,192,000	6% Non-Cumulative Income Mortgage Bonds . . . . .	2,111,520.00
	Total Contingent Interest Charges of New Company . . . . .	<u>\$4,544,389.08</u>
	Total Interest Charges, Fixed and Contingent, of New Com- pany . . . . .	<u><u>\$13,702,578.76</u></u>

and the following amount of Stock:

7,000,000	6% Preferred Stock.
48,480,000	Common Stock.
\$264,408,318	Total.

The lines of Chicago and Eastern Illinois Railroad Company and of New Orleans, Texas and Mexico Railroad Company and of New Orleans Terminal Company are not to be taken over by the New Company.

Capitalization of Old Company, exclusive of K. C., Ft. S. & M. System Bonds undisturbed (see page 30) .....

\$302,076,386.00

Capitalization of New Company, exclusive of K. C., Ft. S. & M. System Bonds undisturbed (see above) .....

\$264,408,318.00

Fixed Interest Charges of Old Company, including K. C., Ft. S. & M. System Bonds undisturbed (see page 30) .....

\$14,886,324.68

Fixed Interest Charges of New Company, including K. C., Ft. S. & M. System Bonds undisturbed (see above) .....

\$9,158,189.68

Contingent Interest Charges of New Company (see above) .....

\$4,544,389.08

Total Interest Charges, Fixed and Contingent, of New Company (see above)

\$13,702,578.76

[fols. 365 &amp; 366]

## Earnings

The officials of St. Louis and San Francisco Railroad Company have certified that the Income Account of the Company for Four Years Ended June 30, 1915, after eliminating all items in connection with Chicago and Eastern Illinois Railroad Stocks, the New Orleans, Texas and Mexico lines and New Orleans Terminal Company (which it is not intended to vest in the New Company) were as follows:

	Year ending June 30, 1912	Year ending June 30, 1913	Year ending June 30, 1914	Year ending June 30, 1915	Average of 4 years
Operating revenue.....	\$41,764,807.84	\$45,690,972.46	\$44,556,294.12	\$42,677,323.13	\$43,672,323.14
Revenue from operations other than transportation.....	325,560.89	359,317.57	367,334.57	297,349.58	339,865.65
Operating expenses, including taxes.....	\$42,100,363.73	\$46,050,290.63	\$44,923,568.69	\$42,974,572.71	\$44,012,198.79
	30,667,171.89	32,768,534.41	35,419,814.82	31,875,648.06	32,682,792.45
Operating income.....	\$11,433,191.84	\$13,281,755.62	\$9,503,753.87	\$11,698,924.05	\$11,329,406.34
Other income less hire of equipment.....	685,470.76	889,540.48	655,191.42	571,842.70	700,511.34
Total income.....	\$12,118,662.60	\$14,171,296.10	\$10,158,945.29	\$12,270,766.75	\$12,029,917.68
Add difference between rental paid to Frisco Construction Company (all of whose stock is owned by St. Louis and San Francisco Railroad Company) and the interest on Construction Company Equipment Certificates outstanding at the time and which are to be retired or provided for in the plan.....	81,308.84	48,733.30	51,082.79	*29,084.12	38,010.29
Add for estimated net earnings of Quannah, Acme and Pacific Railway.....	\$12,199,971.44	\$14,220,029.40	\$10,210,028.08	\$11,641,682.63	\$12,067,927.88
	.....	.....	.....	.....	75,000.00
	.....	.....	.....	.....	\$12,142,927.88

\* Deduct.

The Receivers advise that they charged out during the year ended June 30, 1915, for equipment retired, including depreciation and obsolescence, a total of \$1,977,700.52, of which \$1,426,827.30 was charged to operating expenses and \$550,873.22 to Profit and Loss.

### Maintenance Expenditures

The Receivers advise that large expenditures have been made during the Receivership on account of Maintenance of Way and Maintenance of Equipment in order to improve the property generally, and have furnished the following table showing amount (stated in thousands) expended and charged to operating expenses during the last four fiscal years:

	Maintenance of way	Maintenance of equipment	Total
Year ending June 30, 1912.....	\$5,118,000	\$5,521,000	\$10,639,000
Year ending June 30, 1913.....	5,755,000	6,091,000	11,846,000
Year ending June 30, 1914.....	7,762,000	7,492,000	15,254,000
Year ending June 30, 1915.....	6,088,000	7,162,000	13,250,000

Amount charged to Operating Expenses for Maintenance of Way and Equipment during the period of Receivership, as compared with previous years:

Yearly average for two years ending June 30, 1913 (prior to Receivership) .....	\$11,242,000
Yearly average for two years ending June 30, 1915 (during Receivership) .....	14,252,000

[fol. 367]

## Mileage

Upon retirement of the securities called for deposit under the Plan of Reorganization, the Prior Lien Mortgage Bonds, the Adjustment Mortgage Bonds and the Income Mortgage Bonds will be secured by mortgage in the relative priority stated, on the following lines of railroad including equipment (either directly or through pledge of securities where impracticable to obtain a direct lien), viz:

	Miles first main track owned	Miles second and side track
St. Louis, Mo., to Oklahoma City, Okla. . . . .	543 09	279 17
Sapulpa, Okla., to Texas State Line	192 65	59 30
Monett, Mo., to Red River . . . . .	286 13	65 32
Pierce City, Mo., to Ellsworth, Kas.	323 80	68 80
Springfield, Mo., to Kansas City, Mo. . . . .	185 69	47 95
Beaumont, Kas., to Blackwell, Okla	79 73	9 78
Girard, Kas., to Galena, Kas. . . . .	46 93	34 15
Oronogo, Mo., to Joplin, Mo. . . . .	9 32	6 60
Springfield, Mo., to Chadwick, Mo.	34 86	6 78
Cuba Junction, Mo., to Salem, Mo. and Branches . . . . .	59 54	12 00
Rogers, Ark., to Grove, Okla. . . . .	47 16	3 59
Fayetteville, Ark., to Pettigrew, Ark. . . . .	41 32	4 65
Jenson, Ark., to Mansfield, Ark. . . .	18 34	19 44
Pittsburg, Kas., to Weir City, Kas., and Mines . . . . .	10 48	8 14
Springfield Connecting Ry. . . . .	2 93	1 61
Granby, Mo., Granby Mines . . . . .	1 50	1 09
Blackwell, Okla., to South Bank Red River . . . . .	238 68	41 14
Oklahoma City, Okla., to South Bank Red River . . . . .	174 85	27 27
Hope, Ark., to Ardmore, Okla. . . . .	223 28	41 91
Scullin, Okla., to Sulphur Springs, Okla. . . . .	8 72	1 20
Mead Junction, Okla., to Platter, Okla. (now Kiersey, Okla., to Texas Junction, Okla.) . . . . .	9 24	1 09

	Miles first main track owned	Miles second and side track
Fayetteville, Ark., to Okmulgee, Okla. ....	143 90	22 08
A. V. & W. Junction to Avard, Okla. Southeast Junction, Mo., to Luxora, Ark. ....	175 25	31 06
Nash, Mo., to Hoxie, Ark. ....	241 70	78 45
Mingo, Mo., to Hunter, Mo. ....	121 00	17 12
Hayti, Mo., to Grassy Bayou, Mo. (via Caruthersville) ....	45 80	3 72
Gulf Junction, Mo., to Leachville, Ark. ....	15 70	3 31
Clarkton, Mo., to Malden, Mo. ....	118 20	18 18
Kennett, Mo., to Hayti, Mo. ....	7 30	1 69
Wardell, Mo., to Deering, Mo. ....	18 30	1 56
Zalma, Mo., to Aquilla, Mo. ....	12 10	98
Van Duzer, Mo., to Gibson, Mo. ....	18 40	64
Talipoosa, Mo., to Wardell, Mo. ....	56 00	5 76
Fort Worth, Tex., to Menard, Tex. Brownwood, Tex., to May, Tex. ....	10 70	19
Texas State Line to Fort Worth, Tex. ....	223 44	42 48
[fol. 368] Red River, Tex., to Ver- non, Tex. ....	17 65	1 59
Red River, Tex., to Quanah, Tex. ....	63 89	25 32
Red River, Tex., to Paris, Tex. ....	12 75	1 86
	8 68	3 83
	16 94	8 36
	3,865 94	1,009 16
and in case Quanah, Acme & Pacific Railway is included in New Com- pany, Quanah, Tex., to MacBain, Tex. ....	78 92	
Total . ....	3,944 86	1,009 16

In addition, trackage is used over about 200 miles of other roads.

subject, however, as to the property embraced therein to the lien of \$9,484,000 St. Louis and San Francisco Railway Company General Mortgage 5% and 6% Gold Bonds, due

1931 (part of \$20,100,000, whereof \$10,614,000 will eventually be deposited under the Prior Lien Mortgage or cancelled, the remaining \$2,000 having already been cancelled), and \$5,306,000 Equipment Trust Obligations, maturing after July 1, 1917, to take up which, at or before maturity, Prior Lien Mortgage Bonds to a like principal amount (\$14,790,000) are reserved under the Prior Lien Mortgage.

In addition thereto, the New Mortgages in the order of their relative priority will be a lien on the New Company's leasehold interest in the Kansas City, Fort Scott and Memphis Railway Company, on the stocks, preferred and common, of that company, and on the New Company's interest in the various terminal companies operated jointly with other railroad companies.

### Reorganization Agreement

Agreement, dated the first day of November, 1915, between J. & W. Seligman & Co. and Speyer & Co., respectively co-partnerships, hereinafter called the Reorganization Managers, parties of the first part, and Holders of the Bonds, Trust Certificates and Stock hereinafter mentioned, who shall become parties to this Agreement as hereinafter provided, their successors and assigns, and the Holders of Certificates of Deposit issued under or subject to the Plan, hereinafter collectively called Depositors, parties of the second part.

In consideration of the mutual benefits to be derived from the performance hereof and of the conditions and promises herein contained and for other valuable considerations, the parties hereto agree, each of the Depositors agreeing with each of the other Depositors, as follows:

First. The accompanying Plan is and shall be taken to be a part of this Agreement with the same effect as though each and every provision thereof had been embodied herein and said Plan and this Agreement shall be read as parts of one and the same paper.

[fol. 369] Second. The following bonds, trust certificates and stock may be deposited under the Plan of this Agreement on the terms stated herein and in the Plan:

St. Louis and San Francisco Railroad Company:

Refunding Mortgage Four Per Cent. Gold Bonds (hereinafter called Refunding Mortgage Bonds).

General Lien 15-20 Year Five Per Cent. Gold Bonds (hereinafter called General Lien Bonds).

Consolidated Mortgage Four Per Cent. Gold Bonds.

Southwestern Division First Mortgage Five Per Cent. Gold Bonds.

Central Division First Mortgage Four Per Cent. Gold Bonds.

Northwestern Division First Mortgage Four Per Cent. Gold Bonds.

St. Louis and San Francisco Railway Company:

Trust Mortgage Five Per Cent. Gold Bonds of 1887.

Trust Mortgage Six Per Cent. Gold Bonds of 1880.

Missouri and Western Division First Mortgage Six Per Cent. Gold Bonds.

St. Louis, Wichita and Western Railway Company:

First Mortgage Six Per Cent. Gold Bonds.

St. Louis and San Francisco Railroad Company:

Kansas City, Fort Scott & Memphis Railway Company  
Guaranteed 4% Preferred Stock Trust Certificates.

Muskogee City Bridge Company:

First Mortgage Five Per Cent. Gold Bonds.

St. Louis, Memphis and Southeastern Railroad Company:

First Mortgage Four Per Cent. Gold Bonds.

[fol. 370] Chester, Perryville and Ste. Genevieve Railway  
Company:

First Mortgage Five Per Cent. Gold Bonds.

Pemiscott Railroad Company:

First Mortgage Six Per Cent. Gold Bonds.

Kennett & Osceola Railroad Company:

First Mortgage Six Per Cent. Gold Bonds.

Southern Missouri and Arkansas Railroad Company:

First Mortgage Five Per Cent. Gold Bonds.

Fort Worth and Rio Grande Railway Company:

First Mortgage Four Per Cent. Gold Bonds.

Quanah, Aeme and Pacific Railway Company:

First Mortgage Six Per Cent. Gold Bonds.

St. Louis and San Francisco Railroad Company:

First Preferred Stock.

Second Preferred Stock.

Common Stock.

Third. Frederick Strauss, James N. Wallace, Alexander J. Hemphill, Edwin G. Merrill, Harry Bronner, C. W. Cox and Breckinridge Jones, acting as a Committee under an Agreement dated June 20, 1914, of Holders of Refunding Mortgage Bonds (hereinafter called the Refunding Committee,) have adopted and approved this Plan and Agreement in the exercise of the powers conferred upon said Committee by said Agreement dated June 20, 1914 (hereinafter called the agreement of June 20, 1914).

A copy of this Plan and Agreement has been, or will be, lodged with each of the Depositaries under the Agreement of June 20, 1914, and notice of the fact of the adoption and approval thereof by the Refunding Committee in accordance with the provisions of Article Second of the Agreement of June 20, 1914, will be published at least twice in each week for two successive weeks in the Sun and the New York Times, newspapers of general circulation published in the Borough of Manhattan, City, County and State of New York; in the Boston Herald, a newspaper of general circulation published in the City of Boston, Massachusetts; in [fol. 371] the St. Louis Globe-Democrat, a newspaper of general circulation published in the City of St. Louis,

Missouri; in the Boersen-Courier and the Berliner Boersen Zeitung, newspapers of general circulation published in Berlin, Germany; and in the Handelsblad, a newspaper of general circulation published in Amsterdam, Holland, or in other newspapers as provided in the Agreement of June 20, 1914. Every holder of a certificate of deposit under the Agreement of June 20, 1914, who shall not have exercised, within the period of thirty days after the first publication of such notice, the right of withdrawal conferred by said agreement, shall be conclusively and finally deemed for all purposes to have irrevocably waived the right of withdrawal given to such holder by said agreement, and this Plan and Agreement shall be binding on all holders of certificates of deposit who shall not so have withdrawn their deposited bonds, all of whom shall be conclusively and finally deemed for all purposes to have assented to this Plan and Agreement and the terms thereof whether they receive actual notice or not and be irrevocably bound and concluded by the same, but notwithstanding, the rights of such holders of certificates of deposit shall be such only as are conferred by this Plan and Agreement and shall be subject to compliance with such terms as this Plan and Agreement may impose as conditions of participation in the benefits hereof, and no holder of any certificate of deposit issued under the Agreement of June 20th, 1914, who shall, in the manner authorized by said agreement, withdraw from said agreement or from this Plan and Agreement, shall acquire or have any rights under this Plan and Agreement. Holders of certificates for Refunding Mortgage Bonds deposited under the Agreement of June 20, 1914, who shall not exercise said right of withdrawal will be entitled to the benefits of this Plan and Agreement without the issue of new certificates.

Holders of Refunding Mortgage Bonds not heretofore deposited under the Agreement of June 20, 1914, may become entitled to the benefits of this Plan and Agreement by depositing their said bonds and coupons with some one of the Depositaries under the Agreement of June 20, 1914, on or before April 3, 1916, or such later date as the Reorganization Managers may from time to time determine as hereinafter provided. Such holders shall upon such deposit receive, in respect of the bonds so deposited, certifi-

ates of deposit issued under the Agreement of June 20, 1914.

[fol. 372] Speyer & Co., acting under a Bondholders' Agreement dated May 28, 1913, between themselves and Holders of General Lien Bonds (hereinafter called the General Lien Representatives), have adopted and approved this plan and Agreement in the exercise of the powers conferred upon them by said Bondholders' Agreement dated May 28, 1913 (hereinafter called the Agreement of May 28, 1913).

A copy of this Plan and Agreement with their written adoption and approval thereof has been, or will be, lodged by the General Lien Representatives with Bankers Trust Company of New York, the Depositary under the Agreement of May 28, 1913, for inspection by holders of certificates of deposit thereunder, and notice of the fact of such adoption and approval and of the lodging of a copy thereof with said Depositary in accordance with the provisions of Article Fifth of the Agreement of May 28, 1913, will be published at least twice in each week for three consecutive weeks in two newspapers published in each of the cities of New York, London, Frankfort, Berlin and Amsterdam. All holders of certificates of deposit under the Agreement of May 28, 1913, who before the date specified in such advertisement (which date shall be at least four weeks after the first publication of such advertisement) shall not have exercised the right of withdrawal conferred by the Agreement of May 28, 1913, shall be deemed to have assented to this Plan and Agreement and shall be bound thereby without further act or notice, but, notwithstanding, the rights of such holders of certificates of deposit shall be such only as are conferred by this Plan and Agreement and shall be subject to compliance with such terms as this Plan and Agreement may impose as conditions of participation in the benefits hereof, and no holder of any certificate of deposit issued under the Agreement of May 28, 1913, who shall in the manner authorized by said agreement, withdraw from said agreement or from this Plan and Agreement, shall acquire or have any rights under this Plan and Agreement. Holders of certificates of Bankers Trust Company for General Lien Bonds deposited under the Agreement of May 28, 1913, who shall not exercise said right of withdrawal will

be entitled to the benefits of this Plan and Agreement without the issue of new certificates.

Holders of General Lien Bonds not heretofore deposited under the Agreement of May 28, 1913, may become entitled to the benefits of this Plan and Agreement by depositing their said bonds and coupons with the Depositary under the Agreement of May 28, 1913, on or before April 3, 1916, or [fol. 373] such later date as the Reorganization Managers may from time to time determine as hereinafter provided. Such holders shall upon such deposit receive, in respect of the bonds so deposited, certificates of deposit of Bankers Trust Company issued under the Agreement of May 28, 1913.

This Plan and Agreement has been prepared and adopted by the Committee of Defense of the French Holders of General Lien Bonds, French Series, and by the Office National des Valeurs Mobilières, Paris, under whose direction and auspices said Committee of Defense was established, and various of such holders (1) have executed a power of attorney to L. C. Krauthoff, Esq., (hereinafter called the Attorney-in-fact), a copy of the form whereof is annexed to and made a part of the Instrument of Designation, dated August 5, 1915, of the Bankers Trust Company, as Depositary for such bonds, and (2) have made deposit of said bonds subject to such power of attorney with Bankers Trust Company, as Depositary for the Attorney-in-fact. The written assent of the Attorney-in-fact to this Plan and Agreement filed with the Depositary for the Attorney-in-fact, and the written direction of the Attorney-in-fact to said Depositary to hold the bonds and coupons at any time received by said Depositary of the Attorney-in-fact subject to this Plan and Agreement, and to the order of the Reorganization Managers for the purposes of carrying the Plan and Agreement into effect, shall operate as the assent to this Plan and Agreement by all holders of certificates of deposit at any time issued by said Depositary, or by any of its agents, including The Equitable Trust Company of New York (Paris Branch); and all such holders shall be bound by such assent so expressed without further act or notice. The rights of such holders of certificates, however, shall be such only as are conferred

by this Plan and Agreement, and shall be subject to compliance with such terms as this Plan and Agreement may impose as conditions of participation in the benefits hereof. Holders of such certificates of deposit shall be entitled to the benefits of this Plan and Agreement without the issue of new certificates.

Holders of General Lien Bonds, French Series, not heretofore so deposited, may become entitled to the benefits of this Plan and Agreement by depositing with the Depositary designated by the Attorney-in-fact, or one of its agents, on or before April 3, 1916, or such later date as the Reorganization Managers may from time to time determine as hereinafter provided, their said bonds and coupons, [fol. 374] accompanied by a properly executed power-of-attorney to the Attorney-in-fact. Such holders shall upon such deposit receive, in respect of the bonds so deposited, certificates of deposit of said Depositary issued pursuant and subject to the powers conferred by said power of attorney, and stamped as assenting to this Plan and Agreement.

Holders of all other securities in Article Second hereof mentioned, except stock of St. Louis and San Francisco Railroad Company, may become entitled to the benefits of this Plan and Agreement by depositing their securities with Central Trust Company of New York, as Depositary, at its office in the City of New York, on or before April 3, 1916, or such later date as the Reorganization Managers may from time to time determine as hereinafter provided.

Pursuant to the arrangement with a Purchase Syndicate as stated in the Plan, holders of stock of St. Louis and San Francisco Railroad Company, who shall comply with the terms and conditions of this Plan and Agreement and be entitled to the benefits hereof, may purchase from said Purchase Syndicate, new bonds and common stock (trust certificates) at the price and otherwise on the terms in this Plan and Agreement prescribed. Holders of said stock may become entitled to such right of purchase by depositing their said stock with Guaranty Trust Company of New York, the Depositary for that purpose, at its office in the city of New York, on or before April 3, 1916, or such later date as the Reorganization Managers may from time to time determine as hereinafter provided, and making payment at the time of deposit of \$5 in respect of each share

deposited. No stock will be received for deposit without such payment, which will be receipted for by said Depositary on the certificates of deposit. Any depositor of stock who may desire to prepay in accordance with the Plan, the entire purchase price of the securities which such holder shall be entitled to purchase under the Plan must make his election so to do at the time of such deposit and such election will be appropriately noted on his certificate of deposit.

All securities deposited must be in negotiable form and all stock certificates and registered bonds deposited be either endorsed in blank for transfer or accompanied by proper transfers in blank duly executed. The Refunding Mortgage Bonds, if in coupon form, must bear the coupon maturing July 1, 1914, and all subsequent coupons; the General Lien Bonds, if in coupon form, must bear the coupon maturing May 1, 1914, and all subsequent coupons; all other [fol. 375] securities must bear all appurtenant coupons (or claims for interest, if registered) maturing after July, 1, 1916. All securities (including in that term, whenever used in the Plan or in this Agreement, stock and trust certificates therefor unless the context otherwise requires) must be properly stamped for transfer in New York.

Every holder of a certificate of deposit under the Agreement of June 20, 1914, or the Agreement of May 28, 1913 who shall not have exercised any right of withdrawal under the agreement under which such certificate of deposit was issued, and every holder of a certificate of deposit issued by the Depositary for the Attorney-in-fact or any of its agents, and every holder of a certificate of deposit hereunder, and every recipient of any such certificate, shall thereby become a party to this Plan and Agreement with the same force and effect as though an actual subscriber hereto and shall be embraced with the term Depositors whenever used in this Agreement.

Holders of securities who do not become parties hereto in the manner herein provided, and within the periods fixed therefore, will not be entitled to deposit their securities or become parties to this Agreement on to share in the benefits of the Plan or of this Agreement, and shall acquire no rights hereunder, except upon obtaining an express written consent of the Reorganization Managers; and the Reor-

ganization Managers shall have full power in their discretion, from time to time, and in general or in particular instances, and upon such general or special terms and conditions as they may see fit, to withhold or give such consent, to extend the time for making any deposits of any class of securities under this Plan and Agreement, to admit as parties to, and to participation in, the Plan and this Agreement, as Depositors hereunder, the holders of any of the securities mentioned in Article Second hereof or any other securities dealt with or affected by the Plan, and in like manner to permit the holders of such securities to become parties hereto without the actual deposit of securities; and all security holders so becoming parties shall be embraced within the term Depositors whenever used in this Agreement. The Reorganization Managers in like manner and with like effect may, upon such terms and conditions as they may determine, accept for deposit hereunder bonds without such interest coupons appertaining thereto as they may specify, and also may accept for deposit hereunder such interest coupons without the bonds to which they appertain.

[fol. 376] The term deposited securities, whenever used in this Agreement, shall include all securities directly deposited hereunder or represented by a certificate, the holder of which shall, as in any manner, herein provided, have assented to this Plan and Agreement.

#### Reorganization of St. Louis and San Francisco Railroad

#### Modification of Plan and Agreement Dated November 1, 1915

The undersigned, J. & W. Seligman & Co. and Speyer & Co., as Reorganization Managers under the Plan and Agreement dated November 1, 1915 for the reorganization of the St. Louis and San Francisco Railroad Company, hereby modify said Plan and Agreement by adding to Article Third of said Agreement the following clause:

“The Reorganization Managers may from time to time, upon such terms and conditions as they may determine, permit holders of certificates of deposit for stock not bearing notice of election to prepay the entire purchase price of

bonds and stock trust certificates which they are entitled to purchase under the Plan to elect to prepay such purchase price and exchange their said certificates of deposit for certificates of deposit bearing notation of such election."

In Witness Whereof, said Reorganization Managers have subscribed this instrument as of the 27th day of June 1916.

J. & W. Seligman & Co., Speyer & Co., Reorganization Managers.

Fourth. All Depositors, except as herein otherwise provided, shall receive certificates of deposit in form to be prescribed by the Reorganization Managers specifying the security deposited, and the holders of such certificates of deposit shall be entitled (subject to any provisions contained in such certificates) to the rights and benefits, and only to the rights and benefits, specified in this Plan and Agreement as accruing to the holders of securities of the character represented by such certificates, respectively, or granted by the Reorganization Managers pursuant to the powers conferred upon them, but only upon compliance with the terms and conditions imposed by the Plan and this Agreement.

Certificates of deposit issued hereunder, or under the Agreement of June 20, 1914, or under the Agreement of May 28, 1913, or by the Depositary for the Attorney-in-fact or any of its agents, shall be transferable only subject to the terms and conditions of this Plan and Agreement and in such manner and on such conditions as the Reorganization Managers shall approve, and upon such transfer, all rights of the transferrer under this Plan and Agreement and in respect of the deposited securities represented by the certificate of deposit transferred, and in respect of any sums paid in respect of any stock represented by such certificate, and all rights under such certificate, shall pass to the transferee, and the transferees and holders of such certificates of deposit, shall, for all purposes, be substituted in place of the prior holders, subject to the Plan and this Agreement. All such transferees, as well as the original holders of certificates of deposit issued hereunder or under the Agreement of June 20, 1914, or under the Agreement of May 28, 1913, or by the Depositary for the Attorney-

in-fact or any of its agents, shall be embraced within the term Depositors whenever used herein. Each such certificate of deposit may be treated by the Reorganization Managers and by the Depositaries as a negotiable instrument, and the holder for the time being, or if registered, the registered holder for the time being, may be deemed to be the absolute owner thereof and of all rights of the original Depositor of the securities in respect of which the same was issued, and neither the Depositaries nor the Reorganization Managers shall be affected by any notice to the contrary.

[fol. 377] All holders of certificates of deposit issued hereunder in respect of stock of St. Louis and San Francisco Railroad Company bearing notation of election to prepay the entire purchase price of bonds and stock trust certificates which they are entitled to purchase under the Plan, severally and respectively agree, on behalf of themselves and their respective transferees and assigns, that prompt payment of the entire purchase price of such bonds and stock trust certificates is an essential condition to the acquisition by them of Fully Paid Subscription Certificates or such bonds and stock trust certificates and that any holder of such a certificate of deposit who shall fail to make such payment within the period fixed by the Reorganization Managers shall forfeit all rights to obtain Fully Paid Subscription Certificates or to purchase bonds and stock trust certificates and all rights of purchase under the Plan, as well as the deposited stock represented by such certificate of deposit and all cash theretofore paid under the Plan or this Agreement in respect thereof or otherwise, and shall cease to have any rights whatsoever under this Plan and Agreement and forthwith upon such failure such certificate of deposit shall become null and void and of no effect. The Reorganization Managers may, however, in their discretion, from time to time, in general or particular instances and upon such general or special terms and conditions as they may see fit, enlarge or extend the time within which holders of such certificates of deposit may make such prepayment or may waive any forfeiture in respect thereof.

Upon compliance with all the terms and conditions of this Plan and Agreement, Depositors shall be entitled to

receive upon the consummation of the Plan and upon surrender of their certificates of deposit in negotiable form, the new securities (but only as and when issued and ready for delivery) and any cash to which they shall respectively be entitled pursuant to the terms and provisions of this Plan and Agreement (including in the term new securities whenever used in this Agreement, Purchase Warrants and Fully Paid Subscription Certificates).

The term Depositor or the term certificate holder, whenever used herein, is intended and shall be construed to include not only persons acting in their own right, but also trustees, guardians, committees, agents and all persons acting in a representative or fiduciary capacity, and those represented by or claiming under them and partnerships, associations, stock companies and corporations. No rights [fol. 378] hereunder shall accrue in respect of any securities herein mentioned unless, nor until, the same shall have been subjected to the control of the Reorganization Managers and to the operation of this Plan and Agreement as herein provided.

Fifth. Each and every Depositor hereby requests the Reorganization Managers to endeavor to carry the Plan into practical operation in its entirety or in part, to such an extent and in such manner and with such additions, exceptions and modifications as the Reorganization Managers shall deem to be for the best interests of the Depositors, or of the properties finally embraced in the Plan. Each and every Depositor for himself, and not for any other of them, does hereby sell, assign, transfer and set over to the Reorganization Managers, as joint tenants and not as tenants in common, and to the survivor and survivors of them and to their successors, each and every bond, trust certificate, share of stock, or other security or obligation or evidence thereof, deposited hereunder or represented by a certificate, the holder of which shall, as in any manner herein provided, have assented to this Plan and Agreement, and hereby agrees that the Reorganization Managers shall be, and they hereby are, vested with the legal title to, and all the power and authority of owners of, all bonds, trust certificates, stock and other securities and obligations deposited hereunder or represented by such certificates, and of all other securities,

obligations and property of every nature whatsoever which may be acquired by the Reorganization Managers pursuant to the provisions of the Plan or of this Agreement. The Depositors respectively agree at any time and from time to time on demand of the Reorganization Managers to execute and deliver any and all further transfers, assignments, authorizations, powers or writings required for vesting the ownership of such securities and property in the Reorganization Managers or its nominees and also all certificates which may be required by the United States Income Tax Law and the regulations of the Treasury Department for the collection of coupons and interest on the deposited securities or any of them. The Reorganization Managers shall have and may exercise in respect of the securities deposited under or subject to this Plan and Agreement all powers conferred by the Agreement of June 20, 1914, on the Refunding Committee and by the Agreement of May 28, 1913, on the General Lien Representatives. Without prejudice to the general power and authority herein granted, the Depositors hereby severally irrevocably authorize and empower the Reorganization Managers to transfer such bonds, shares of stock or other [fol. 379] securities or obligations or property into their own names as Reorganization Managers, or into the name of their nominee or nominees; to procure or consent to any corporate action by St. Louis and San Francisco Railroad Company (hereinafter called the Railroad Company) or any of its constituent, controlled, subsidiary or lessor companies; to sign and file any written consent or instrument required or permitted by law to be signed or filed; to demand, receive and collect all moneys that may be due and owing to or payable in respect of any deposited securities or any securities acquired by the Reorganization Managers pursuant to the provisions of the Plan or this Agreement, and whether for interest, principal, dividends or otherwise; to elect, or request and cause any trustee or trustees under any mortgage or trust indenture securing the payment of any such securities to elect, to have the principal of such securities become due and payable, and at pleasure to revoke or withdraw such election or cause the same to be revoked or withdrawn; to request, direct or instruct any trustee or trustees of any

such mortgage or trust indenture to prosecute foreclosure or take other proceedings for the enforcement thereof or otherwise, or for the enforcement or any such securities, or to exercise the powers or any of them conferred by such mortgage or trust indenture; to confirm and give to such trustee or trustees all such powers as in the judgment of the Reorganization Managers may be advantageous in carrying out the Plan; to make all such other requests, directions, instructions or demands upon any such trustee or trustees or otherwise as the Reorganization Managers may deem proper; to remove any such trustee or to appoint a new trustee to succeed any trustee so removed or resigning or otherwise disabled from acting; to take or institute, or cause to be taken or instituted, or to become parties to, or exercise control over, all proceedings, legal or otherwise, give such directions, execute such papers and do or cause to be done such acts as the Reorganization Managers may consider judicious to enforce any security for, or procure the payment, of any deposited securities or otherwise to protect the rights and interest of the Depositors, or in which the Depositors may be interested, or for any of the purposes of the Plan or of this Agreement, including the right to apply for receivers, or the removal of receivers and the substitution of others receivers, or for the termination of any receivership and the delivery of any property to its owners; to discontinue or cause or consent to the discontinuance of, any actions or legal proceedings whether instituted by the Reorganization Managers or by others; to enter into settlement of any litigation now or [fol.380] at any time existing or threatened in whole or in part, with plenary power to enter into arrangements for decrees or orders for facilitating or hastening the course of litigation, or in any way to promote the purposes of this Plan and Agreement; to call or waive notice, of and to attend, and, either in person or by proxy, to vote at, any and all meetings of bondholders or stockholders or creditors of any corporation however convened; to terminate or to seek to dissolve or modify any trust or lease, in whole or in part, to apply for the determination of the validity thereof, or for removal of any trustees or the substitution of other trustees, or to take any other steps in respect of any trust or lease or under any provi-

sion thereof; to purchase or sell at such prices as they shall see fit, or otherwise deal in or with, or, upon such terms and conditions as in their discretion they may determine, to pay, compromise, settle or acquire any securities, obligations or indebtedness of, or claims against, the Railroad Company or any of its constituent, controlled, subsidiary or lessor companies, or its receivers, or claims constituting a lien, directly or through securities, on any part of the railroad system of the Railroad Company, or subject to any mortgage or trust indenture securing the payment of any deposited securities, or in which the Railroad Company may have any interest, direct or indirect, and, in general, any securities, obligations, indebtedness or claims which the Reorganization Managers may deem advisable, and to use for any such purpose any securities contemplated by the Plan and not specifically appropriated by the Plan to other purposes, or any moneys coming into their hands; to enter into agreements with the holders, or any committee representing the holders, of any such securities, obligations, indebtedness or claims for the deposit thereof under the Plan and this Agreement or under the Plan and any other agreement which the Reorganization Managers may approve for the purpose, and to arrange for the payment in whole or in part of the compensation and expenses of any such committee; to have and exercise such powers in respect to all securities, obligations, indebtedness and claims so subjected to the Plan as they are authorized to exercise in respect to the deposited securities; to enter into agreements for the acquisition of, and to acquire on such terms as they may see fit, any lines of railroad or other property of any kind or nature whatsoever in the judgment of the Reorganization Managers advantageous to the New Company or for any of the purposes of this Plan and Agreement; to cause to be listed upon the New York Stock Exchange or elsewhere, any of the certificates of deposit issued hereunder and any of the new securities contemplated by the Plan; to [fol. 381] pay the expenses of any such listing, and any taxes, fees or charges in connection therewith; to pay or discharge any taxes, fees or governmental charges, domestic or foreign, necessary or expedient for or in connection with the deposit, assignment or transfer under the

Plan or this Agreement, or in pursuance thereof, of any securities, and any taxes, fees or charges imposed by any public authority wherever situated, domestic or foreign, in respect of the authorization, creation, issue or distribution of any of the new securities or otherwise in connection with the carrying out of the Plan and this Agreement; from time to time and upon such terms and conditions as the Reorganization Managers may determine, to borrow, or by guaranty or by the sale of new securities to be created or otherwise to obtain, money for any of the purposes of the Plan or this Agreement, including such sums as the Reorganization Managers may deem expedient to provide for the New Company; to charge or pledge any deposited securities, any property acquired by the Reorganization Managers pursuant to the provisions of the Plan or of this Agreement or any new securities to be issued, for the payment of any moneys borrowed or indebtedness or liability incurred; in case of any such borrowing, whether upon pledge or not, to give to the lender the promissory note or notes of the Reorganization Managers for the sums borrowed; to direct in writing the Depositary for any securities to hold the securities deposited with it and any other property, or any designated part thereof, as security for the repayment of any moneys advanced or to be advanced in accordance with this Agreement, in which case such securities and other property shall be, and shall be held by such Depositary as, security for such advance with the same effect as if they were actually deposited with the person making such advance as security for the payment thereof; to give all bonds of indemnity or other bonds, and to charge therewith the deposited securities, any property acquired by the Reorganization Managers pursuant to the provisions of the Plan or of this Agreement or new securities to be issued, or any part thereof; to do whatever, in the judgment of the Reorganization Managers, may be necessary to promote or to procure joint or separate sales of any property herein concerned, wherever situated; to adjourn the sale of any property, or any portion or lot thereof at discretion; to bid, or to refrain from bidding, at any sale, either public or private, either in separate lots or as a whole, for any property or any part thereof, whether or not owned, con-

trolled or covered by any deposited security, including or excluding any particular rolling stock, line or railway or other property, real or personal, and at, before or after any [fol. 382] such sale to arrange and agree for the resale of any portion of the property which the Reorganization Managers may decide to sell rather than to retain; to elect not to take any portion of any property purchased at any such sale; to hold any property purchased by the Reorganization Managers either in their names or in the name of their nominee or nominees, and to apply any deposited securities or any property acquired by the Reorganization Managers under the provisions of the Plan or of this Agreement, in satisfaction of any bid or towards obtaining funds for the satisfaction thereof, it being understood that the term property, whenever used in this Plan and Agreement, includes franchises. The amount to be bid or paid by the Reorganization Managers for any property shall be absolutely discretionary with them; and, in case of the sale to others of any property, the Reorganization Managers may receive, out of the proceeds of such sale or otherwise, any dividend in any form accruing on any securities deposited under or otherwise subjected to the Plan and this Agreement. Nothing in the Plan or this Agreement contained shall be construed to require the Reorganization Managers to acquire the stock, bonds or property of New Mexico and Arizona Land Company or to require them to acquire any property of the Railroad Company or of any of its constituent, controlled, subsidiary or lessor companies, the acquisition of which they may not deem advisable.

Sixth: The Reorganization Managers may procure the organization of one or more new companies wherever in their discretion they may determine, or may adopt or use any existing or future companies, and may cause to be made such consolidations, leases, sales or other arrangements, and may make such conveyances or transfers of any properties or securities acquired by the Reorganization Managers, and take such other steps as the Reorganization Managers may deem proper for the purpose of creating the new securities provided for in the Plan and carrying out all or any of the provisions thereof. They may cause the

ownership of all or any property of the New Company to be either a direct ownership or ownership through bonds or shares of stock, or both, of any other company, and may cause any mortgage or mortgages securing bonds of the New Company to be either a direct lien upon any particular property, or a lien upon the bonds or shares of stock, or both, of any company owning such property. They may prescribe the form of all securities, charters, by-laws, mortgages, trust certificates and all other instruments at [fol. 383] any time to be issued, filed or entered into in connection with the carrying out of the Plan. They may create and provide for all necessary trusts, and may nominate and appoint trustees thereunder, excepting that the Voting Trustees shall be appointed as stated in the Plan. So far as the reorganization or the issue of the securities or stock under the Plan may be subject to the approval or authorization of any public utilities or public service commission in any state in which any of the property to be acquired by the New Company is situated or in which the Reorganization Managers may in their discretion determine to organize the New Company, or of any other commission having authority in the premises, the amount of capitalization to be issued in the reorganization may be reduced by such amount as the Reorganization Managers may in their discretion determine, in order to comply with the order of, or to obtain the authorization or approval of, any such commission. In the event of such reduction of capitalization, the whole of such reduction shall be made in Common Stock and in the amount of stock trust certificates to be sold to the Purchase Syndicate as provided in the Plan, and by it in turn offered to the three classes of depositing stockholders of the Railroad Company; the amounts of stock trust certificates deliverable, respectively, under the three classes of Purchase Warrants and Fully Paid Subscription Certificates being reduced by an equal percentage. The Reorganization Managers may proceed under this Plan and Agreement or any part thereof with or without foreclosure and in case of foreclosure may exercise any power, either before or after foreclosure sale; and in every case all the provisions of this Plan and Agreement shall equally apply to and in respect of any physical properties embraced un-

der the reorganization and to and in respect of any securities representing any such property, it being intended that for all purposes any such property and any security representing such property may be treated by the Reorganization Managers as substantially identical. In case any separate plan shall in the opinion of the Reorganization Managers become expedient to effect the reorganization of any subordinate or other company, or as to any property constituting a part of the system of the Railroad Company, the Reorganization Managers may promote and participate in any such reorganization and may deposit thereunder any securities thereby affected. The Reorganization Managers may make equitable provision for any case of lost or destroyed securities and provide for and make such issues of fractional scrip as shall be necessary appropriately to represent any fractional interest in the new securities, and [fol. 384] may in their discretion settle for and adjust any such fractional interests in cash, and they may issue temporary or interim certificates representing new securities. They may also in their discretion set apart and hold in trust, or place in trust with any trust company, any part of the new securities to be issued, and cash which may be received from sales of new securities, or otherwise, as they may deem judicious for the purpose of securing the application thereof for any of the purposes of this Plan and Agreement. The Reorganization Managers may receive and dispose of, or allow to be received or disposed of by any other person, firm or corporation, in accordance with any of the provisions of the Plan and of this Agreement, the new securities to be created, and they may vote or cause or allow any person, firm or corporation to vote upon any or all stock until the same shall have been transferred or distributed as contemplated in the Plan, to those entitled ultimately to receive the same. The Reorganization Managers may negotiate and contract with any persons, firms or corporations for the acquisition of property or equipment for use in the operation of the railroads or property to be acquired by the New Company under the Plan or for obtaining or granting or effecting running powers, terminal facilities, exchanges of property, or any other conveniences or operating arrangements which they may deem necessary or desirable to obtain or to grant or to

effect, including arrangements for merger, consolidation, purchase, sale or lease, and any guaranty of securities, and the Reorganization Managers may make contracts therefor binding upon the New Company, and, generally, the Reorganization Managers may make and ratify such purchases, contracts, stipulations or arrangements as will in their opinion operate directly or indirectly to aid in the preservation, improvement, development or protection of any property now constituting the St. Louis and San Francisco Railroad System, or which the Railroad Company or any of its constituent, controlled, subsidiary or lessor companies has contracted to acquire, or to prevent or avoid opposition to or interference with or otherwise aid, the successful execution of the Plan and this Agreement. The Reorganization Managers may, at public or private sale, or otherwise, and at such price or prices and upon such terms and conditions as in their discretion they may determine, dispose of any securities of the New Company left in their hands because of any failure to make deposits hereunder or for any other reason, or they may use such securities for the purpose of carrying out the reorganization in such manner as they may deem expedient.

[fol. 385] Seventh. The Reorganization Managers shall be the sole and final judges as to whether and when holders of a sufficient amount of the securities of the various classes shall have assented to the Plan and this Agreement to render it advisable to declare the Plan operative, and their determination in that respect shall be final, binding and conclusive upon all Depositors. They may, in their discretion, declare the Plan operative as to all classes of securities for which provision is made in the Plan or only as to certain classes of such securities, provided that the Refunding Mortgage Bonds and the General Lien Bonds which shall have been deposited under or subject to this Plan of Agreement shall be among the securities as to which the Plan is declared operative. In case the Reorganization Managers shall declare the Plan operative as to any classes of deposited securities, they shall thereupon publish notice to that effect in the manner provided in Article Eleventh hereof. In case the Reorganization Managers shall declare the Plan operative but shall exclude therefrom any class of the deposited securities, the securities of the classes so ex-

cluded, or the proceeds thereof or substitutes therefor then under the control of the Reorganization Managers, shall be delivered to the holders of certificates of deposit representing the securities of such class in proportion to their respective interests, upon surrender of their respective certificates in negotiable form and upon payment only of such taxes as may be imposed upon the transfer and delivery of the securities represented by such certificates. The Reorganization Managers shall also have full power and authority, whenever they shall deem proper, to abandon, or to alter, modify or depart from, the Plan or any part thereof. They may, at any time or times, after any such partial abandonment, restore to the Plan and abandoned part or parts thereof, and may seek to carry the same into effect as fully as if such part or parts had not been abandoned. They may also attempt to carry the Plan into effect rather than abandon or modify the same, even though it be manifest that, as carried out, the Plan must depart from the original Plan or from some part thereof. But in case of any intentional change or modification of the Plan which in the judgment of the Reorganization Managers shall adversely affect to a material degree the Depositors of any class of securities, a statement of such proposed change or modification shall be filed with the Depositaries of the class of securities, so adversely affected, and notice of the fact of such filing shall be given as provided in Article Eleventh hereof; and holders of certificates of deposit for such particular class or [fol. 386] classes or securities so adversely affected, may, at any time within twenty days after the first publication of such notice, upon surrender of their respective certificates in negotiable form and upon payment of (a) such taxes as may be imposed upon the transfer or delivery of the securities withdrawn, and upon payment also, in the case of holders of certificates of deposit for Refunding Mortgage Bonds or General Lien Bonds (including the French Series) or stock of the Railroad Company, of (b) their pro rata shares, as apportioned by the Reorganization Managers, of the expenses of the Reorganization Managers (including in that term wherever used in the Plan or this Agreement, the compensation of the Reorganization Managers and the compensation and expenses of any committee for, or other representatives of, securities dealt with under the Plan

which shall have been assumed or paid by the Reorganization Managers), and (c), if the Reorganization Managers in their discretion shall so require, such sum as the Reorganization Managers in their sole and unrestricted discretion shall fix as the ratable proportion of all other indebtedness, obligations and liabilities of the Reorganization Managers to be borne by such certificate holders, withdraw from the Plan and this Agreement, and thereupon shall be entitled to receive the deposited securities represented by the certificates so surrendered, or the proceeds thereof or substitutes therefor then under the control of the Reorganization Managers, in proportion to their respective interests, and, if the Reorganization Managers shall have required the payment of any sum pursuant to subdivision (c) of this clause certificates of interest representing their pro rata share as fixed by the Reorganization Managers in their sole and unrestricted discretion of any other securities or property acquired by the Reorganization Managers and not previously or simultaneously sold, contracted to be sold or otherwise disposed of by the Reorganization Managers, or, as the Reorganization Managers in their discretion may determine, certificates in such form and with such provisions as the Reorganization Managers shall prescribe evidencing their pro rata interests in such securities or property and in the ultimate proceeds of any liquidation or any other dealing therewith by the Reorganization Managers. Every certificate holder not so surrendering and withdrawing within such twenty days after the first publication of such notice shall be deemed to have assented to the proposed changes or modifications, and, whether or not otherwise objecting, shall be bound thereby as fully and effectively as if he had actually assented thereto. Any [fol. 387] changes or modification finally made by the Reorganization Managers shall be part of the Plan and this Agreement; and all provisions and references herein concerning the Plan shall apply to the Plan so changed or modified. A change or modification of the Plan pursuant to which additional Common Stock or additional Preferred Stock carrying any dividend rate authorized by the Plan may be issued in the reorganization, shall not be deemed to affect adversely the Depositors of any class of securities or stock.

In case the Reorganization Managers shall finally abandon the entire Plan, they shall thereupon publish notice to that effect in the manner provided in Article Eleventh hereof. In case of such abandonment of the entire Plan holders of certificates of deposit shall, upon the surrender of their respective certificates in negotiable form and upon payment of (a) such taxes as may be imposed upon the transfer and delivery of the securities withdrawn, and upon payment also, in the case of holders of certificates of deposit for Refunding Mortgage Bonds or General Lien Bonds (including the French Series) or stock of the Railroad Company, of (b) such sum as the Reorganization Managers in their sole and unrestricted discretion shall fix as the ratable proportion of the expenses and all other indebtedness, obligations and liabilities of the Reorganization Managers to be borne by such certificate holders, be entitled to withdraw and receive the securities represented by the certificates of deposit so surrendered, or the proceeds of, or substitutes for, such securities then under the control of the Reorganization Managers, and in the case of holders of certificates of deposit for Refunding Mortgage Bonds or General Lien Bonds (including the French Series) or stock of the Railroad Company, a proportionate part, as determined by the Reorganization Managers, of any other securities or property acquired by the Reorganization Managers and not previously or simultaneously sold, contracted to be sold, or otherwise disposed of by the Reorganization Managers, or, as the Reorganization Managers in their discretion may determine, certificates in such form and with such provisions as the Reorganization Managers shall prescribe evidencing such proportionate interest in such securities or property and in the ultimate proceeds of any liquidation or other dealing therewith by the Reor-[fol. 388] ganization Managers in pursuance of the provisions of such certificates; provided, however, that in case of such abandonment of the entire Plan, the Refunding Committee (or a majority of the persons now constituting such Committee) and/or the General Lien Representatives and/or the Attorney-in-fact may, at or after commencement of the publication of notice of abandonment, file with each of the Depositaries for the Refunding Mortgage Bonds, or with the Depositary for the General Lien Bonds, or with

the Depositary for the Attorney-in-fact, as the case may be, a plan or an agreement, or both, looking toward concerted action on behalf of the holders of the bonds of the class now represented by them, and upon such filing shall publish notice thereof in the manner prescribed in Article Eleventh hereof, and every holder of a certificate of deposit issued under the Agreement of June 20, 1914, or under the Agreement of May 28, 1913, or by the Depositary for the Attorney-in-fact or any of its agents, as the case may be, not surrendering his certificate of deposit in compliance with the provisions of this Agreement in such respect and withdrawing his securities as hereinbefore provided within a period of thirty days commencing upon the first publication of such notice of filing, shall be irrevocably and conclusively deemed to have assented to the plan or agreement, or both, so filed, and whether or not otherwise objecting shall be bound and concluded thereby as fully and effectually as if he had actually assented thereto and shall be deemed to have become a party thereto with like effect as if he had executed the same under seal, and shall cease to have any further right to withdraw his securities. Upon the expiration of said period of thirty days the Refunding Committee (or a majority of the persons now constituting such committee) or the General Lien Representatives or the Attorney-in-fact, as the case may be, so filing such plan or agreement, or both, shall thenceforth upon payment of the sums payable as hereinbefore provided in respect of withdrawals of the securities represented by certificates of deposit issued under the Agreement of June 20, 1914, or under the Agreement of May 28, 1913, or by the Depositary for the Attorney-in-fact or any of its agents, as the case may be, not so withdrawn within said period of thirty days, shall be vested under the terms of the plan or agreement, or both, so filed, as trustees of an express trust with the legal title of all the securities, certificates of interest or other property distributable in respect of such certificates of deposit upon withdrawal as hereinbefore provided.

[fol. 389] The Reorganization Managers shall have power to determine and to apportion the ratable share of expenses, indebtedness, obligations and liabilities to be borne by each class of deposited securities and the ratable share of other securities and property, or certificates of interest

therein, to be distributed to each class of deposited securities upon any withdrawal under any of the provisions of this Agreement, and the apportionments so made by the Reorganization Managers shall be final, binding and conclusive upon all the Depositors and upon any committees for, or other representatives of, such securities; provided, however, that in case of the modification or abandonment of the Plan such expenses, indebtedness, obligations and liabilities shall be apportioned only among the holders of certificates of deposit representing Refunding Mortgage Bonds, General Lien Bonds (including the French Series) and stock of the Railroad Company, and provided further, that in such case the amounts paid by holders of certificates of deposit for stock to entitle them to exercise the right of subscription conferred by the Plan, or any securities or other property acquired therewith, or the proceeds thereof, when received, shall, subject as aforesaid, be distributed or equitably adjusted among the respective holders of such certificates of deposit for stock who shall have complied with all the terms and conditions of this Plan and Agreement, in proportion to the amounts paid in respect thereof. The abandonment of the entire Plan shall not affect any previous acts or obligations done or undertaken by the Reorganization Managers.

Every Depositor who shall exercise any right of withdrawal conferred by any provision of this Agreement shall by the surrender of his certificate of deposit and such withdrawal thereupon, without further act, be relieved from the Plan and this Agreement, and shall cease to have any rights thereunder, and the exercise of such right of withdrawal shall release and discharge the Reorganization Managers, the Depositaries and all other parties from all liability and accountability under this Plan and Agreement; provided, however, that such withdrawal shall not in any wise affect any rights or powers of the Reorganization Managers hereunder, or as may be reserved in any certificate of interest, to deal with any securities or property theretofore or thereafter acquired by the Reorganization Managers, notwithstanding the issuance to such withdrawing Depositors of certificates of interest in respect of such securities or property. Deposited securities cannot without [fol. 390] the consent of the Reorganization Managers be

withdrawn from this Plan and Agreement, except as and when in this Agreement provided.

Eighth. Said firms of J. & W. Seligman & Co. and Speyer & Co. shall be the Reorganization Managers under this Plan and Agreement. Both firms as such Reorganization Managers shall act and concur in all steps and proceedings hereunder, and no action shall be taken except with the assent of both firms. Each of said firms shall act as a co-partnership, and in case of any change in either of said firms, the respective firms of J. & W. Seligman & Co. and Speyer & Co., or their respective successor firms, as from time to time constituted, shall continue as reorganization Managers, with all the powers, rights and title vested in the Reorganization Managers hereunder. Neither the Reorganization Managers nor any of the Depositaries assume any personal responsibility for the execution of the Plan or of this Agreement, or any part of either, nor for the result of any steps taken or acts done for the purposes thereof; the Reorganization Managers, however, undertake in good faith to endeavor to execute the same. No Depositary nor either of the firms constituting the Reorganization Managers nor any member of either of said firms shall be personally liable for any act or omission of any agent or employee selected in good faith, nor for any error of judgment or mistake of law, nor in any case except for his, its or their own individual wilful malfeasance or neglect. The Reorganization Managers shall be entitled to compensation for their services in that behalf and the amount thereof when determined in accordance with the Plan shall be finally binding and conclusive upon all parties. The Reorganization Managers may form or procure the formation of the Purchase Syndicate and the Loan Syndicate described in the Plan and also any other syndicate or syndicates which they may deem advantageous for carrying out the purposes of the Plan, and may act as Managers of such syndicate or syndicates and may so act in association with others, and such syndicates shall be entitled to such compensations or commissions as are provided by the Plan or as shall be determined by the Reorganization Manager. Any member of either firm constituting the Reorganization Managers, or any of the Depositaries, or any member of the Refunding Committee, or the Attorney-in-fact, at any time, may be a

Voting Trustee, and either of said firms or any member of either thereof or any corporation of which any member of either thereof may be an officer or director, or any Depository, or any officer or director of any Depository, or any member of the Refunding Committee, or the Attorney-in-fact, or any of the Voting Trustees, or any firm in which any of the Voting Trustees or any member of the Refunding Committee or the Attorney-in-fact may be a partner, or any corporation of which any of the Voting Trustees or any member of the Refunding Committee or the Attorney-in-fact may be an officer or director, may be or become pecuniarily interested in any contracts, property or matters which this Agreement concerns, including participation in or under any syndicate agreement, as syndicate managers, syndicate subscribers or otherwise, whether or not mentioned in the Plan, or may be an incorporator, officer or director of the New Company. Any of the Depositories may be trustee under any mortgage or agreement created or entered into in connection with the Plan or otherwise act in any manner for the New Company or for the holder of any of the new securities. The deposited securities shall be held by the various Depositories subject in all respects to the control of the Reorganization Managers, and any direction given by the Reorganization Managers shall be full and sufficient authority for any action of any Depository or of any trust company or of any other custodian or of any committee or agent.

The Reorganization Managers may employ counsel, depositaries, agents and all necessary assistants and may delegate any power or authority as well as discretion; and they may incur and discharge any and all expenses which they deem reasonable for the purposes of the Plan or for carrying out or attempting to carry out the same, and as well all expenses in connection with the preparation of the Plan and this Agreement, the issue of certificates of deposit and the issue and transfer of securities, legal expenses, expenses for advertising and printing, and all taxes, all expenses of or incident to the receivership proceedings of the Railroad Company and of any of its subsidiary or controlled companies, all expenses and compensation of depositaries, all organization and other expenses of the New

Company and of any other company or companies utilized in connection with the reorganization, and all other expenses in any manner connected with the Plan and this Agreement of which they may deem it expedient to incur in undertaking to promote any of the purposes thereof. The Reorganization Managers shall be the sole judge of the propriety or expediency of any and all expenses and the amount thereof. The Reorganization Managers may include as part of their expenses the compensation, expenses and liabilities including counsel fees, of the Refunding Committee acting under the Agreement of June 20, 1914, of the General Lien Representatives acting under the Agreement of May 28, 1913, and of the Attorney-in-fact and the Committee of Defense and the Office National represented by him, all of whose accounts shall be filed with the Reorganization Managers if the Plan shall be declared operative and when approved by them, shall be finally binding and conclusive upon all parties having any interest therein; and for all their expenses, indebtedness, obligations and liabilities, the Reorganization Managers shall have a lien upon all the deposited securities and upon all property and securities acquired in the course of the reorganization, and, until their delivery or distribution, upon the new securities contemplated by the Plan.

All moneys paid under or with reference to the Plan and this Agreement shall be paid over to the Reorganization Managers, who shall as bankers hold the same (or who may deposit the same in whole or in part with any bank, bankers or trust company), subject to application for any of the purposes of this Plan and Agreement as may be most convenient, and as from time to time may be determined by the Reorganization Managers, whose determination as to the propriety and purpose of any such application shall be final, and nothing in the Plan shall be understood as limiting or requiring the application of specific moneys to specific purposes.

Ninth. The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; and it is hereby declared that it is intended to confer on the Reorganization Managers, in respect of all deposited securities, and in all other respects, any and all powers which the Re-

organization Managers may deem expedient in or towards carrying out or promoting the purposes of this Plan and Agreement in any respect even though any such power be apparently of a character not now contemplated; and the Reorganization Managers may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as, for any reason, they may deem expedient. The Reorganization Managers may, before declaring the Plan operative, exercise any or all the powers conferred upon them by this Agreement, in whole or in part. The methods to be adopted towards carrying out this Agreement shall be entirely discretionary with the Reorganization Managers; and the Plan and this Agreement [fol. 393] are in all respects to be liberally construed so as to enable the reorganization Managers to carry into effect the purposes of the Plan, whether in the form hereto annexed or with such modifications or substitutions as may be made pursuant to any of the provisions of this Agreement. Anything which anywhere in the Plan or this Agreement the Reorganization Managers are authorized to do or allow to be done, they may do or allow to be done by or through such agents or agencies as in their discretion they may determine, or by or through others, with their approval, consent, or acquiescence, or by contracting therefore with any person, firm or corporation. The Reorganization Managers may construe the Plan and this Agreement, and their construction thereof or action thereunder in good faith shall be final and conclusive. They may supply any defect or omission, or reconcile any inconsistency, in such manner and to such extent as shall be expedient to carry out the same effectively and they shall be the sole and final judges of such expediency. Any action contemplated in this Plan and Agreement to be performed on or after completion of the reorganization, may be taken by the Reorganization Managers at any time when they shall deem the reorganization advanced sufficiently to justify such course, and the Reorganization Managers may defer, as they may deem expedient, the performance of any provision of this Plan and Agreement, or may commit such performance to the New Company and may cause the New Company to pay or assume any indebtedness or liabilities authorized or incurred by the Reorganization Managers or otherwise in further-

ance of the Plan, or to make or assume any obligations which in the judgment of the Reorganization Managers may be expedient to carry out the Plan and this Agreement.

Tenth. All securities and other obligations deposited under this Plan and Agreement, or acquired by the Reorganization Managers under any of the provisions hereof, shall remain in full force and effect for all purposes, and shall not be deemed to have been merged, satisfied, released or discharged by any delivery of new securities, and no right or lien shall be deemed released or waived, but said securities and obligations, and any judgment upon any of such securities or obligations, including claims and judgments for deficiencies, and all liens and equities, shall remain unimpaired, and may be enforced by the Reorganization Managers or by the New Company, or by any other assignee of the Reorganization Managers until paid or satisfied in full or expressly released. Neither the Reorganization Managers nor any security holders or other creditors of the Railroad Company, by executing this Agreement, or by [fol. 394] becoming parties hereto, release, surrender, or waive any lien, right or claim whatsoever, and all such liens, rights, or claims shall vest unimpaired in the Reorganization Managers and their assigns or successors in interest; and any purchase or purchases by or on behalf of the Reorganization Managers, or their nominees, under any decree for the enforcement of any such lien, right or claim, shall vest the property purchased in the Reorganization Managers or their nominees, free from all interest or claim on the part of any stockholders or creditors of the Railroad Company, or any other parties. No right is conferred, nor is any trust, liability or obligation (except the agreements herein contained in favor of the Depositors) created by this Plan and Agreement or assumed hereunder, or by or for the New Company in favor of any security holder, or any other creditor, or of any holder of any claim whatsoever against the Railroad Company, nor in favor of any company now existing or to be formed hereafter (whether such claim be based on any bonds, coupons, stocks or other securities, lease, guaranty or otherwise), with respect to any securities deposited under this Agreement or any moneys paid to or received by the Reorganization Mana-

gers or the Depositaries hereunder, or with respect to any property acquired by purchase at any foreclosure sale, or with respect to any new securities to be issued, or with respect to any other matter or thing.

Eleventh. All calls or notices hereunder, except when herein otherwise expressly provided, shall be inserted in *The Sun* and the *New York Times*, two daily papers of general circulation in the City of New York, twice in each week for two successive calendar weeks, beginning on any day of the week. In case either of said newspapers shall not at the time be published the Reorganization Managers may select such other newspaper or newspapers of general circulation as they shall see fit in the place of the newspaper the publication of which shall have ceased. Any call or notice whatsoever when so published by the Reorganization Managers shall be taken and considered as though personally served on all parties hereto and upon all parties bound hereby, as of the date of the first insertion thereof, and such publication shall be the only notice required to be given under any provision of this Plan and Agreement.

Twelfth. The accounts of the Reorganization Managers shall be filed with the Board of Directors the New Company within one year after its organization shall have been completed, unless a longer time be granted by said Board. The [fol. 395] accounts, when approved by such Board of Directors and until disapproved by said Board, shall be final, binding and conclusive upon all parties having any interest therein, and thereupon the Reorganization Managers shall be discharged. The acceptance of new securities by any Depositor shall estop such Depositor from questioning the conformity of such securities in any particular to any provisions of the Plan; and the acceptance of new securities by the holders of a majority in amount of the certificates of deposit for any class of securities shall in each case respectively so estop all holders of certificates of deposit for securities of that class, and shall constitute a release and discharge of the Reorganization Managers, the committee or other representative issuing the certificates of deposit in respect of the securities of such class and the Depositaries on the part of all the holders of all outstanding cer-

tificates for securities of such class, from all liability and accountability of any kind, character and description whatsoever, save the obligation to make delivery of a like pro rata amount of cash, securities or other property or certificates of interest therein upon the surrender of outstanding certificates of deposit for securities of such class.

Thirteenth. The Plan and this Agreement shall bind and benefit the several parties, including the Depositors hereunder, their and each of their survivors, heirs, executors, administrators, successors and assigns. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument.

In witness whereof the Reorganization Managers have subscribed this Agreement, or a counterpart thereof, as to the date hereof and the Depositors have become parties hereto in the manner hereinbefore provided.

J. & W. Seligman & Co., Speyer & Co., Reorganization Managers.

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF  
MISSOURI

No. 815

In the Matter of the Application for Authorization of the  
Reorganization of ST. LOUIS AND SAN FRANCISCO RAILROAD  
COMPANY and for an Order Authorizing the Issue of  
Stocks and Bonds.

[fol. 396] The petition of J. & W. Seligman & Co., and Speyer & Co., as Reorganization Managers under a Plan and Agreement of Reorganization, dated November 1, 1915, and now applying for the authorization by the Public Service Commission of the State of Missouri of said Plan of Reorganization, which is hereto annexed and marked Exhibit A, respectfully shows:

I. The petitioner, J. & W. Seligman & Co., is a co-partnership engaged in the business of banking, whose principal place of business and post office address is 1 South William

Street, Borough of Manhattan, City and State of New York. The petitioner, Speyer & Co., is a co-partnership engaged in the business of banking, whose principal place of business and post-office address is 26 Pine Street, Borough of Manhattan, City and State of New York. The petitioners have jointly been constituted Reorganization Managers under said Plan of Reorganization.

II. St. Louis and San Francisco Railroad Company (hereinafter called the Railroad Company) was organized June 29, 1896, under the laws of Missouri, in connection with the reorganization of St. Louis and San Francisco Railway Company.

III. The lines of railroad of the Railroad Company and of its leased and auxiliary companies, all of the capital stock of which it owns, which are to be embraced in the reorganized System contemplated by the Plan, including the line of railroad of Quannah, Acme and Pacific Railway Company, extend in general from St. Louis and Kansas City, Missouri, to Ellsworth, Kansas, Waynoka, Oklahoma, Oklahoma City, Oklahoma, Quanah and Vernon, Texas, Dallas, Fort Worth and Menard, Texas, and Memphis, Tennessee, and Birmingham, Alabama, and comprise about 5,154.71 miles of first main track in the following states:

Alabama	132.49 Miles
Arkansas	597.50 "
Kansas	629.97 "
Missouri	1713.72 "
Mississippi	142.86 "
Oklahoma	1497.56 "
Tennessee	18.34 "
Texas	422.27 "

[fol. 397] The Railroad Company also operates 203.46 miles of main line trackage rights in the following states:

Missouri	6 18 Miles.
Oklahoma	23 26 "
Texas	174.02 "

IV. The properties and franchises of the Railroad Company have been in the hands of Receivers appointed by the United States District Court of the Eastern Division of the

Eastern District of Missouri since May 27, 1913. On May 1, 1914, default was made in the payment of the interest then falling due on the \$69,284,000 of the Railroad Company's General Lien 15-20 Year Five Per Cent Gold Bonds, and on July 1, 1914, default was made in the payment of the interest which fell due on that date on the \$68,557,000 of Refunding Mortgage Gold Bonds. No interest has been paid on either issue since those defaults and proceedings have been instituted for the foreclosure of the mortgages securing the two issues. Defaults have also been made in the payment of the principal and interest of the Railroad Company's \$2,250,000 Two Year Five Per Cent Secured Gold Notes and \$2,600,000 Two Year Six Per Cent Secured Gold Notes and in the payment of interest on the Railroad Company's \$28,582,000 of New Orleans, Texas and Mexico Division First Mortgage Bonds, \$12,153,750 of Trust Certificates for Preferred Stock of Chicago and Eastern Illinois Railroad Company and \$16,944,500 of Trust Certificates for Common Stock of Chicago and Eastern Illinois Railroad Company, and on the guaranty of the Railroad Company of the interest payable on \$14,000,000 of New Orleans Terminal Company First Mortgage Four Per Cent Gold Bonds. The difficulties of the Railroad Company were in large measure due to the failure of the Chicago and Eastern Illinois and New Orleans, Texas and Mexico Systems to earn the fixed charges which the Railroad Company had assumed in connection with its acquisition of interests therein, and it is not intended that the lines of those systems or the property of the New Orleans Terminal Company (which is operated in connection with the New Orleans, Texas and Mexico System), shall be included in the reorganization.

V. Immediately following the receivership in 1913, a committee was organized to represent holders of Refunding Mortgage Bonds and the deposit of said bonds was subsequently called for under the terms of an Agreement dated June 20, 1914. Speyer & Co. immediately following said receivership called for the deposit of the General Lien [fol.398] 15-20 Year Gold Bonds under a Bondholders' Agreement dated May 28, 1913. A Committee of Defense has also been formed by Office National des Valeurs Mo-

bilieres, Paris, to represent French holders of General Lien 15-20 Year Gold Bonds, French Series, and a large number of said holders have designated L. C. Krauthoff, Esq., as their attorney in fact. These representatives of bondholders have for a long time been engaged in an examination of the affairs of the Railroad Company's System, and the relative value and earning capacity of its various lines, with a view to formulating a Plan of Reorganization which would fairly recognize the rights of the security-holders. Much time and attention have been devoted to acquiring knowledge as to details, and a careful expert examination of the Railroad Company's operations and physical condition and of its financial requirements has been made by Mr. J. W. Kendrick. The plan for the reorganization which is submitted herewith has been formulated as a result of such examination, and it is expected will accomplish, among other things, the following results:

1. Reduction of the fixed charges to a limit believed to be safely within the net earning capacity of the reorganized property;

2. Adequate capital provision for present and future requirements;

3. Payment or adjustment of all debts, guaranties, etc., and provision for existing equipment trust obligations;

4. The preservation of the parts of the System deemed advantageous, and such control for the reorganized property as shall safeguard the rights of security holders.

Said Plan has been prepared and adopted by said Committee representing Refunding Mortgage Bonds, by Speyer & Co., representing General Lien Bonds deposited under the Agreement of May 28, 1913, and by L. C. Krauthoff representing the Committee of Defense and as attorney-in-fact for French holders of General Lien Bonds.

Committees representing the holders of the following securities have approved the provisions of the Plan with reference to the treatment of such securities: New Orleans, Texas and Mexico Division First Mortgage Gold Bonds, Two Year Five Per Cent Secured Gold Notes, Two Year Six Per Cent Secured Gold Notes, St. Louis & San Francisco Railroad Company Trust Certificates for Preferred and Common stock of Chicago & Eastern Illinois Railroad

[fol. 399] Company, and Ozark & Cherokee Central Railroad Company First Mortgage Five Per Cent Gold Bonds.

Said Plan has also been approved by the Committee representing stockholders of the Railroad Company under an Agreement dated December 1, 1913.

VI. The lines of railroad and equipment intended to be embraced in the reorganization have been appraised by persons familiar with the property, on the basis of reproduction cost, at \$319,276,000. It is contemplated that the New Company provided for in the Plan will acquire miscellaneous securities and real estate not included in the above-mentioned properties which have been appraised at approximately \$2,500,000 and it is estimated that the cash which the New Company will receive from the Receivers together with the new cash provided by the Plan for capital purposes will exceed in the aggregate \$10,000,000. The entire capitalization of the New Company's System upon the consummation of the Plan (including the Kansas, Fort Scott & Memphis System) will be well within the appraised value of the property and the cash thus provided.

VII. Of the 5358.17 miles of railroad constituting the Railroad Company's System and included in the reorganized Systems as stated in Paragraph III, the lines of railroad owned directly by the Railroad Company comprise 3522.59 miles of first main track in the following states:

Arkansas	348.93 Miles.
Kansas	370.54 "
Missouri	1,330.38 "
Oklahoma	1,472.74 "

VIII. The Railroad Company owns the entire capital stock of Kansas City, Fort Scott & Memphis Railway Company and operates the lines of railroad of that Company under a lease for ninety-nine years from August 23, 1901. Those lines constitute 919.45 miles of first main track, running in general from Kansas City to Memphis in the following states:

Arkansas	248.57 Miles.
Kansas	259.43 "
Missouri	383.34 "
Oklahoma	24.82 "
Tennessee	3.29 "

[fol. 400] The Railroad Company operates under a lease running for ninety nine years from December 17, 1903, the lines of railroad of Kansas City, Memphis & Birmingham Railroad Company, the entire capital stock of which is owned by Kansas City, Fort Scott & Memphis Railway Company. These line constitute 290.4 miles of first main track running in general from Memphis, Tennessee, to Birmingham and Bessemer, Alabama, in the following states:

Alabama .....	132 49 Miles.
Mississippi .....	142 86 "
Tennessee .....	15 05 "

The Railroad Company owns the entire capital stock of Birmingham Belt Railroad Company, which Birmingham Belt Railroad Company, which operates a belt and terminal system in the City of Birmingham, consisting of about fourteen acres of well located real estate, and 39.01 miles of track, serving thirty-four industries.

The Railroad Company owns the entire capital stock of Kansas City and Memphis Railway & Bridge Company which owns the bridge over the Mississippi River near Memphis.

The properties described in this paragraph VIII are hereinafter collectively called the K. C. Ft. S. M. System.

IX. The Railroad Company owns the entire capital stock of the following companies which operate lines of railroad in Texas:

Fort Worth and Rio Grande Railway Company .....	223 44 Miles.
Brownwood North & South Railway Company .....	17 65 "
St. Louis, San Francisco & Texas Railway Company .....	85 32 "
Paris & Great Northern Railway Company .....	16 94 "

X. The Railroad Company owns or has interests in valuable terminals and terminal facilities at St. Louis, Kansas City, Wichita, Memphis, Birmingham, Dallas and other points on the lines of the system.

XI. The Plan of Reorganization which is submitted herewith contemplates that all the lines of railroad and inter-

ests hereinbefore in paragraphs VII to X, inclusive, described shall be included in the reorganized System either by direct ownership or by ownership through securities or by the continuance of existing leases and their transfer to the New Company contemplated by the Plan, the bonds of [fol. 401] the K. C., Ft. S & M System, however, to remain undisturbed.

XII. The Railroad Company also owns \$6,777,800 of common stock and \$8,102,500 of preferred stock of Chicago & Eastern Illinois Railroad Company, for which the Railroad Company issued its stock trust certificates to the amount of \$12,153,750 for preferred stock and \$16,944,500 for common stock, these certificates bearing guaranteed dividends at the rate of four per cent per annum.

The Railroad Company also owns the entire capital stock of New Orleans, Texas & Mexico Railroad Company and has issued \$28,128,000 of its New Orleans, Texas & Mexico Division First Mortgage Gold Bonds, secured by a first mortgage on the property of the latter Company. In July, 1913, the New Orleans, Texas & Mexico lines were placed in the hands of separate receivers. They have been operated independently of the Railroad Company's system since then, and are now in process of separate reorganization.

As hereinbefore stated it is not intended that the lines of Chicago & Eastern Illinois Railroad Company or those of New Orleans, Texas & Mexico Railroad Company, or the property of New Orleans Terminal Company (which is operated in connection with the New Orleans, Texas & Mexico System), shall be taken over in any manner by the New Company on the reorganization.

XIII. The capitalization and fixed charges of the Railroad Company as of June 30, 1915, (including equipment trust obligations and receivers' certificates and including the bonded debt of Quanah, Acme and Pacific Railway Company but excluding its outstanding \$100,000 of capital stock), were as follows:

Annual Interest Charge or Guaranty

\$3,000,000	Receivers' Certificates.....	\$180,000
9,484,000	St. Louis & San Francisco Railway Company General Mortgage 5% and 6% Bonds maturing 1931.....	511,010

9,932,636	Equipment Trust Certificates...	196,300
68,557,000	Refunding Mortgage 4% Gold Bonds .....	2,742,280
69,284,000	General Lien 15-20 Year 5% Gold Bonds in hands of Public	3,461,200
1,558,000	Consolidated Mortgage 4% Gold Bonds .....	62,320
829,000	Southwestern Division 1st Mortgage 5% Gold Bonds.....	41,450
145,000	Central Division 1st Mortgage 4% Gold Bonds.....	5,800
[fol. 402]		
47,000	Northwestern Division 1st Mortgage 4% Gold Bonds.....	1,880
2,250,000	Two-Year Five Per Cent Secured Gold Notes.....	112,500
2,600,000	Two-Year Six Per Cent Secured Gold Notes.....	150,000
439,000	St. Louis & San Francisco Railway Company Trust Mortgages 5% Gold Bonds of 1887.....	21,950
182,000	St. Louis & San Francisco Railway Company Trust Mortgage 6% Gold Bonds of 1880.....	10,950
79,000	Missouri & Western Division 1st Mortgage 6% Gold Bonds.....	4,740
304,000	St. Louis, Wichita & Western Railway Company 1st Mortgage 6% Gold Bonds.....	18,240
13,510,000	Kansas City, Fort Scott & Memphis Railroad Company Preferred Stock 4% Trust Certificates in hands of public.....	540,000
100,000	Muskogee City Bridge Company 1st Mortgage 5% Gold Bonds.....	5,000
225,000	St. Louis, Memphis & Southeastern Railroad Company 1st Mortgage 4% Gold Bonds in hands of public.....	9,000
140,000	Chester, Perryville & Ste. Genevieve Railway Company 1st Mortgage 5% Gold Bonds.....	7,000
54,000	Penitentiary Railroad Company 1st Mortgage 6% Gold Bonds.....	3,240
65,000	Kennett & Osceola Railroad Company 1st Mortgage 6% Gold Bonds .....	3,000
4,500	Southern Missouri & Arkansas Railroad Company 1st Mortgage 5% Gold Bonds.....	225
2,927,000	Fort Worth & Rio Grande Railway Company 1st Mortgage 4% Gold Bonds.....	116,920
2,880,000	Ozark & Cherokee Central Railway Company 1st Mortgage 5% Gold Bonds.....	144,000
1,758,000	Quannah, Acme & Pacific Railway Company 1st Mortgage 6% Gold Bonds.....	105,480
23,128,000	New Orleans, Texas & Mexico Division 1st Mortgage 5% Gold Bonds .....	1,156,400
5,000,000	New Orleans, Texas & Mexico Division 1st Mortgage 4% Gold Bonds (French Series).....	225,000

1,000,000	New Orleans, Terminal Company 1st Mortgage 4% Gold Bonds being half of issue.....	200,000
12,152,750	Chicago & Eastern Illinois Pas- senger Stock Trust Certificates.....	400,000
11,444,300	Chicago & Eastern Illinois Com- mon Stock Trust Certificates in hands of public.....	165,200
	Sundry Bonds and Stocks Funds (Year 1913).....	270,000.00
<hr/> 4,552,076.200		<hr/> 812,000.200
1,000,000	St. Louis and San Francisco Railroad Com- pany First Preferred Stock (valuation \$6- 55.00 stock in Treasury.)	
10,000,000	St. Louis and San Francisco Railroad Com- pany Second Preferred Stock (valuation \$50 stock in Treasury.)	
20,000,000	St. Louis and San Francisco Railroad Com- pany Common Stock (valuation \$20 share stock in Treasury.)	
<hr/> 30,000,000.000		
	Total	
	R. C. B. & M. System (to be authorized in reorganization)	
1,000,000	Birmingham and Railroad Co. First Mortgage 4% Gold Bonds.....	50,000
25,000,000	Kansas City, Ft. Scott & Mem- phis Railway Company Or- fanning Mortgage 4% Gold Bonds.....	1,000,000
11,700,000	Kansas City, Ft. Scott & Mem- phis Railway Company Com- solidated Mortgage 4% Bonds.....	575,000
20,000,000	Kansas & Missouri Railroad Company, First Mortgage 4% Bonds.....	50,000
1,000,000	Chicago and North Western Co. First Mortgage 4% Bonds.....	50,000
1,000,000	Kansas City & Memphis Rail- way & Bridge Company First Mortgage 4% Gold Bonds.....	50,000
1,125,000	Kansas City, Memphis & Fort Smith Railroad Co. Consol- idated Mortgage 4% Bonds.....	512,500.00
1,125,200	Kansas City, Memphis & Fort Smith Railroad Co. Second 4% Bonds.....	200,000
	Bonds and Stocks Fund under Kansas City, Ft. Scott & Mem- phis Loan and Miscellaneous Fund 1913.....	100,000.00
<hr/> 5,126,000.000		<hr/> 2,467,500.00
Total Bond Charges.....		<hr/> 694,000.000

XIV. It appears from the petition of the Railroad Com-  
pany filed with this Commission on or about May 25, 1913,  
in connection with an application for authority to issue and

sell \$761,000, New Orleans, Texas and Mexico Division First Mortgage Gold Bonds, that none of the outstanding [fol. 404] stock or stock certificates or bonds, notes or other evidences of indebtedness of the Railroad Company have been issued or used in capitalizing the right to be a corporation or any franchise or permit or the right to own, operate or enjoy any such franchise or permit, or any contract, consolidation or lease.

XV. It is contemplated that the various properties will be sold under foreclosure of the Refunding Mortgage or the General Lien Mortgage, or both mortgages, or under the general creditors bill, or otherwise dealt with, and a successor company or companies will be organized. Of the securities and stock mentioned in Paragraph XIII, it is planned to leave undisturbed, securities of the Railroad Company to the amount of but \$14,790,000 (\$9,484,000 St. Louis and San Francisco Railway Company General Mortgage 5% and 6% Bonds maturing 1931, and \$5,306,000 Equipment Obligations maturing after July 1, 1917) together with all bonds of the K. C., Ft. S. & M. System, and it is contemplated that as a consideration for the property, securities and cash to be conveyed and delivered to the New Company, or which it will acquire pursuant to the Plan, it will deliver its bonds and stock. To that end new securities will be created and issued or reserved by the New Company as follows:

#### Prior Lien Mortgage Gold Bonds

The Prior Lien Mortgage Bonds will be limited to the total authorized amount of \$250,000,000 at any one time outstanding. They will bear interest payable semi-annually, at such rate not exceeding six per cent per annum, as may from time to time be determined by the board of directors at the time of issue and stated in the bonds, and are to be secured by mortgage and deed of trust to Central Trust Company of New York and some individual Trustees, which it is intended shall embrace all or substantially all the lines of railroad, franchises and equipment, terminals and other property (including stocks and bonds), except as otherwise dealt with under the Plan, acquired by the New Company pursuant to the Plan and also all additional property of

every character (including stocks and bonds) at any time thereafter acquired by the New Company.

As more fully set forth in the Plan, the Prior Lien Mortgage Bonds are to be issued, or are to be reserved for issue under the Prior Lien Mortgage for the following purposes:

[fol. 405] In partial exchange for existing securities embraced in the Plan (Series A, Four Per Cent maturing July 1, 1950, redeemable at par and accrued interest) . . . . .	\$93,398,500
Sold to Purchase Syndicate and by it to be offered for holders of the Railroad Company on the terms and conditions stated in the Plan (Series B, Five Per Cent, maturing July 1, 1950, redeemable at 105 and accrued interest) . . . . .	\$25,000,000
For the corporate purposes of the New Company (Series B, Five Per cent, maturing July 1, 1950, redeemable at 105 and accrued interest) . . . . .	6,811,500
Reserved to retire \$5,306,000 Equipment Trust Certificates maturing after July 1, 1917 . . . . .	5,306,000
Reserved to retire \$9,484,000 St. Louis and San Francisco Railway Company General Mortgage 5% and 6% Bonds due 1931, undisturbed . . . . .	9,484,000
Reserved for issue for new equipment, improvements, and betterments, and to meet the cost of construction of new mileage or of the acquisition of other lines of railroad or stocks or bonds representative thereof . . . . .	110,000,000
	<u>\$250,000,000</u>

The Prior Lien Mortgage Bonds, Series A, provided to be presently issued under the Plan in partial exchange for existing securities, so far as not used in such exchange are to be reserved for such purpose under restrictions to be fixed by the Reorganization Managers, but if in the judgment of the Reorganization Managers it will facilitate the carrying out of the Plan to provide cash for the purposes for which such bonds might otherwise be reserved, they may sell such bonds in whole or in part and may cause the bonds so to be sold to be issued as Series B Bonds, Five Per Cent.

## Cumulative Adjustment Mortgage Gold Bonds

The adjustment Mortgage Bonds will be limited to the total authorized amount of \$75,000,000 at any one time outstanding. They are to be secured by mortgage and deed of trust to Bankers Trust Company and some individual as Trustees on the properties embraced in the Prior Lien [fol. 406] Mortgage and from time to time becoming subject thereto. The Adjustment Mortgage will be subject to the Prior Lien Mortgage and to the prior payment out of the mortgaged property of all bonds at any time issued and outstanding under the Prior Lien Mortgage. The Adjustment Mortgage Bonds are to bear interest, payable annually or semi-annually as may be provided in the Adjustment Mortgage, at such rate not exceeding six per cent, per annum as may from time to time be determined by the board of directors at the time of issue and stated in the bonds but payable, prior to the maturity of the principal, only out of the Available Net Income of the New Company as shall be defined in the Adjustment Mortgage. The New Company, however will not be required in any year to pay interest except in amounts of one-quarter of one per cent or some multiple thereof, but any fractional amount not so distributed shall be carried forward into the next interest period. The interest on the Adjustment Mortgage Bonds will be cumulative but accumulations of interest shall not bear interest. At the maturity of the principal, all arrears of interest shall be payable.

As more fully set forth in the Plan, the Adjustment Mortgage Bonds are to be issued, or are to be reserved for issue under the Adjustment Mortgage for the following purposes:

In partial exchange for existing securities embraced in the Plan (Series A, Six Per Cent, carrying interest from July 1, 1915, maturing July 1, 1955 and redeemable at par and accrued interest).....	\$40,547,818
Reserved for issue for equipment, improvements and betterments, and new mileage constructed or acquired .....	34,452,182
	<hr/>
	\$75,000,000

## Income Mortgage Gold Bonds

The Income Mortgage Bonds will be limited to the total authorized amount of \$75,000,000 at any one time outstanding. They are to be secured by mortgage and deed of trust to Union Trust Company of New York and some individual as Trustees, on the properties embraced in the Prior Lien Mortgage, and from time to time becoming subject thereto. The Income Mortgage will be subject to the Prior Lien Mortgage and to the Adjustment Mortgage and to the prior [fol. 407] payment out of the mortgaged property of all bonds at any time issued and outstanding under the Prior Lien Mortgage, and all bonds at any time issued and outstanding under the Adjustment Mortgage. The Income Mortgage Bonds are to bear interest, payable annually or semi-annually, as may be provided in the Income Mortgage, at such rate not exceeding six per cent per annum as may from time to time be determined by the board of directors at the time of issue and stated in the bonds but payable only out of the Available Net Income of the New Company as shall be defined in Income Mortgage, but only after the payment therefrom of all interest on the Adjustment Mortgage Bonds. The New Company, however, will not be required to pay interest except in amounts of one-quarter of one per cent or some multiple thereof, but any fractional amount not so distributed will be carried forward into the next interest period. The interest on the Income Mortgage Bonds will not be cumulative. The Income Mortgage Bonds may be made convertible at the option of the holders into Preferred Stock (or, if converted during the life of the Voting Trust, into trust certificates therefor) at par, under conditions and restrictions to be set out in the Income Mortgage. The Income Mortgage Bonds to be presently issued under the Plan will be so convertible into Six Per Cent Preferred Stock (or voting trust certificates therefor).

As more fully set forth in the Plan, the Income Mortgage Bonds are to be issued, or are to be reserved for issue under the Income Mortgage, for the following purposes:

To be issued in partial exchange for existing securities embraced in the Plan and for adjustment of Outstanding Indebtedness; bonds not used or required to be reserved for that purpose to be available for corporate purposes of the New Company (Series A, Five Per Cent Convertible, ranking for interest from July 1, 1915, maturing July 1, 1960, redeemable at par, and interest for proportionate part of current interest period) .....	\$38,661,200
Reserved for issue for improvements, betterments and additions and equipment.....	36,338,800
	<hr/> \$75,000,000

### Preferred Stock

[fol. 408] The Preferred Stock will be entitled to receive for any fiscal year dividends at such rate not exceeding Seven Per Cent per annum and no more as may be from time to time determined by the board of directors at the time of issue thereof and stated in the certificates therefor but such dividends will not be Cumulative. No dividend shall be declared or paid on the Common Stock for any fiscal year until full dividends have been paid or set aside on the Preferred Stock for such fiscal year and no dividend shall be paid on the Preferred Stock for any fiscal year other than out of the net income for such fiscal year applicable to the payment of dividends, unless for the two fiscal years next preceding, the full interest shall have been paid on the outstanding Income Mortgage Bonds. The Preferred Stock may be issued in series and any series may be made in whole or in part redeemable at the election of the Company on such terms, on such notice and at such premiums as the board of directions may determine at the time of issue and be stated in the certificates of such series.

The Preferred Stock will be issued and reserved as follows:

For adjustment of Outstanding Indebtedness (to be issued as Six Per Cent Stock, and to be redeemable, if allowed by law, at par and proportionate dividend for current dividend period), any stock not so used to be avail- able for the corporate purposes of the New Company .....	\$7,000,000
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Reserved for conversion of convertible  
income mortgage bonds:

For conversion of \$38,661,200 In- come Mortgage Bonds, Series A, Five Per Cent maturing July 1, 1960, presently to be issued under the Plan (to be issued as Six Per Cent Stock and to be redeemable if allowed by law, at par and proportion- ate dividend for current divi- dend period) .....	\$38,661,200
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For conversion of \$36,338,800 Income Mortgage Bonds re- served under the Plan for sub- [fol. 409] sequent issue if issued with conversion privileges, otherwise reserved for future issue for corporate purposes ..	36,338,800
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75,000,000

Reserved for future issue for corporate pur- poses not exceeding .....	118,000,000
	\$200,000,000

Common Stock

The Common Stock will be applied as follows:

Sold to Purchase Syndicate and by it to be of- fered for subscription to stockholders of the Railroad Company on the terms and conditions stated in the Plan .....	\$47,700,000
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For adjustment of Outstanding Indebtedness, any stock not so used to be available for the corporate purposes of the New Company ..	5,300,000
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Reserved for future issue for corporate pur- poses not exceeding .....	197,000,000
	\$250,000,000

## Particular Provisions, Restrictions and Limitations

Provision will be made in the Prior Lien Mortgage and also in the Adjustment Mortgage and in the Income Mortgage for an annual auditing, on behalf of the holders of bonds issued under the mortgages, of the accounts of the New Company by certified public accountants, for inspection by experts of the New Company's lines of railroad and equipment from time to time as the Corporate Trustees under the mortgages may require, and for the statement in detail by the New Company in every annual report of all the stocks, bonds and other securities of the New Company or of any subsidiary company of its System pledged or sold by the New Company or its respective subsidiary companies during such year and the amounts in each case realized from every such pledge or sale. For a more detailed statement of such provisions reference is hereby made to the Plan.

Provision is to be made that the New Company shall not create any additional mortgage, nor increase the amount of Preferred Stock authorized under the Plan, except in each instance after obtaining the consent of the holders of a majority of the whole amount of Preferred Stock outstanding, given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the Common Stock as shall be represented at such meeting, the holders of each class of stock voting separately. During the existence of the Voting Trust, similar consent of holders of like amounts of the respective classes of certificates of beneficial interest shall also be necessary for the purposes indicated.

Provision is also to be made that neither the New Company nor any company controlled by it, shall purchase any line of railroad or take a lease of any line of railroad (other in either case than industrial tracks) or guarantee any part of the principal of, or interest on, any obligation of or any dividend or other payment on the stock of, any other company or acquire more than twenty-five per cent in amount of the stock of any other company unless in each instance after obtaining the assent of the holders of a majority in amount of the outstanding stock, present at a meeting of which not less than twenty days' notice specifying such

business to be acted on thereat, shall have been given in the same manner as may be provided in the by-laws for the Annual Meeting.

The Preferred and Common Stock of the New Company (except such number of shares as may be disposed of to qualify directors) is to be vested in Voting Trustees (under a Trust Agreement prescribing their powers and duties and the method of filling vacancies), for five years, although the Voting Trustees may in their discretion, deliver the stock at an earlier date.

XVI. The new securities presently to be issued under the Plan are proposed to be distributed substantially as follows:

Prior Lien Mortgage Gold Bonds

Series A Bonds delivered in partial exchange for St. Louis and San Francisco Railroad Company Refunding Mortgage Four Per Cent Gold Bonds General Lien 15-20 Year Five Per Cent Gold Bonds will carry interest from July 1, 1915.

Series A Bonds delivered in exchange or partial exchange for other securities will carry interest from Jan'y. 1, 1916.

Series B Bonds will carry interest from July 1, 1915.

A. Series A. Four Per Cent due 1950, redeemable at par and accrued interest.

To be used in partial exchange for

[fol. 411]

St. Louis and San Francisco Railroad Company:	Amount outstanding	Amount of prior lien mortgage bonds, series A, 4%, issued in partial exchange
Refunding Mortgage Four Per Cent Gold Bonds.....	\$68,557,000	\$51,417,750
General Lien 15-20 Year Five Per Cent Gold Bonds.....	60,384,000	17,346,000
Consolidated Mortgage Four Per Cent Gold Bonds.....	1,558,000	1,558,000
Southwestern Division First Mort- gage Five Per Cent Gold Bonds..	829,000	1,036,250
Central Division First Mortgage Four Per Cent Gold Bonds.....	145,000	181,250
Northwestern Division First Mort- gage Four Per Cent Gold Bonds..	47,000	58,750

	Amount outstanding	Amount of prior lien mortgage bonds, series A, 4%, issued in partial exchange
St. Louis and San Francisco Railway Company:		
Trust Mortgage Five Per Cent Gold Bonds of 1887.....	439,000	548,750
Trust Mortgage Six Per Cent Gold Bonds of 1880.....	182,000	227,500
Missouri and Western Division First Mortgage Six Per Cent Gold Bonds.	74,000	92,500
St. Louis, Wichita and Western Rail- way Company: First Mortgage Six Per Cent Gold Bonds.....	304,000	380,000
St. Louis and San Francisco Rail- road Company: Kansas City, Fort Scott and Memphis Railway Com- pany Guaranteed Four Per Cent Preferred Stock Trust Certificates.	15,000,000	11,250,000
Muskogee City Bridge Company: First Mortgage Five Per Cent Gold Bonds.....	100,000	125,000
St. Louis, Memphis and Southeastern Railroad Company: First Mortgage Four Per Cent Gold Bonds.....	225,000	281,250
Chester, Perryville and Ste. Gene- vieve Railway Company: First Mortgage Five Per Cent Gold Bonds .....	140,000	175,000
[fol. 412] Fort Worth and Rio Grande Railway Company: First Mortgage Four Per Cent Gold Bonds.....	2,923,000	2,923,000
Ozark & Cherokee Central Railway Company: First Mortgage Five Per Cent Gold Bonds.....	2,880,000	3,600,000
Quanah, Acme and Pacific Railway Company: First Mortgage Six Per Cent Gold Bonds.....	1,758,000	2,197,500
		<hr/> \$93,398,500

B. Series B, Five Per Cent due 1950, redeemable at 105 and accrued in-  
terest.

Sold to Purchase Syndicate and by it to be offered for subscription to stockholders of the Railroad Company on the terms and condi- tions stated in the Plan.....	25,000,000
For the corporate purposes of the New Company.....	6,811,500
	<hr/> \$31,811,500
	<hr/> 125,210,000

**Cumulative Adjustment Mortgage Gold Bonds (Carrying Interest from July 1, 1915)**

Series A, Six Per Cent, due 1975, redeemable at par and accrued interest.  
To be used in partial exchange for:

	Amount outstanding	Amount of 6% cumulative adjustment mortgage bonds issued in partial exchange
St. Louis and San Francisco Railroad Company:		
Refunding Mortgage Four Per Cent Gold Bonds.....	\$68,557,000	\$17,139,250
General Lien 15-20 Year Five Per Cent Gold Bonds.....	69,384,000	19,658,568
Kansas City, Fort Scott and Mem- phis Railway Company Guar- anteed Four Per Cent Preferred Stock Certificates.....	15,000,000	3,750,000
		<u>\$40,547,818</u>

[fol. 413] **Convertible Income Mortgage Gold Bonds (Ranking for Interest from July 1, 1915)**

Series A, Five Per Cent, due 1960, redeemable at par, and interest for proportionate part of current semi-annual interest period.

To be used in partial exchange for

	Amount outstanding	Amount of convertible 5% income mortgage bonds
St. Louis and San Francisco Railroad Company:		
General Lien 15-20 Year Five Per Cent Gold Bonds.....	\$69,384,000	\$38,161,200
For adjustment of Outstanding In- debtedness, any bonds not so used to be available for the corporate purposes of the New Company....	.....	500,000
		<u>\$38,661,200</u>

**Preferred Stock, Six Per Cent**

For adjustment of Outstanding In- debtedness, any stock not so used to be available for the corporate purposes of the New Company....	.....	7,000,000
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**Common Stock**

Sold to Purchase Syndicate and by it to be offered for subscription to stockholders of the Railroad Com- pany on the terms and conditions stated in the Plan.....	.....	47,700,000
For adjustment of Outstanding In- debtedness, any stock not so used to be available for the corporate purposes of the New Company....	.....	5,300,000
		<u>53,000,000</u>

XVII. The capitalization and interest charges of the New Company upon the consummation of the reorganization and upon the retirement of the \$287,286,386 of securities dealt with under the Plan will be as follows:

### Fixed Charge Obligations

		Annual fixed charge	
\$93,398,500	Prior Lien Mortgage Bonds, Series A 4%.....	\$3,735,940	
25,000,000	Prior Lien Mortgage Bonds, Series B, 5%, sold to provide cash requirements of the plan	1,250,000	
	leaving undisturbed with bonds reserved under the Prior Lien Mortgage to take up same at or before maturity.		
[fol. 414]			
9,484,000	St. Louis & San Francisco Railway Company General Mortgage 5% and 6% Bonds maturing 1931.....	511,010	
5,306,000	Equipment Trust Certificates maturing after July 1, 1917 (about) .....	265,000	
	Sundry Rentals and Sinking Funds (year 1915).....	579,119.26	
133,188,500			\$6,341,069.36
	The Fixed Charges in connection with the Kansas City, Fort Scott & Memphis Railway Company Leasehold and Auxiliary Companies' Bonds, Rentals, Sinking Fund and Miscellaneous, as stated in detail in paragraph XIII hereof.....		2,817,120.32
	Total Fixed Charges of New Company, and		9,158,189.68

### Contingent Charge Obligations

40,547,818	6% Cumulative Adjustment Mortgage Bonds.....	\$2,432,869.08	
38,661,200	5% Non-Cumulative Convertible Income Mortgage Bonds.....	1,933,060	
	Total Contingent Charges of New Company .....		4,365,929.08
	Total Charges, Fixed and Contingent of New Company.....		13,524,118.76
	and the following amount of Stock:		

7,000,000	6% Preferred Stock
53,000,000	Common Stock
272,397,518	Total.

XVIII. This capitalization will have provided new cash to the amount of \$25,000,000 which it is estimated will be necessary in connection with carrying out the Plan and which will be applied toward the payment of existing obligations and otherwise substantially as follows:

Receivers' Certificates .....	\$3,000,000
Equipment Trust Obligations maturing after January 2, 1916, and prior to July 2, 1917 ..	3,232,636
\$54,000 Pemiscot Railroad Company First Mortgage Six Per Cent Gold Bonds .....	54,000
\$65,000 Kennett & Osceola Railroad Company First Mortgage Six Per Cent Gold Bonds ..	65,000
\$4,500 Southern Missouri and Arkansas Rail- road Company First Mortgage Bonds ....	4,500
July 1, 1914, January 1, 1915, and July 1, 1915, interest on the Refunding Mortgage Bonds ..	4,113,420
May 1, 1914, and November 1, 1914, interest on the General Lien Bonds .....	3,469,200
[fol. 415] Interest at 6% per annum on fore- going interest instalments from date of ma- turity to date of actual payment, calculated as of January 1, 1916 .....	541,688
Cash payments in connection with exchange of underlying bonds .....	310,650
Payment in connection with adjustment of Se- cured Debt, Judgments and Preferred Claims (estimated) .....	2,000,000
January 1, 1916, interest on \$68,763,750 Prior Lien Mortgage Four Per Cent Bonds, Series A, deliverable in partial exchange for Re- funding Mortgage Bonds and for General Lien Bonds pursuant to the Plan .....	1,375,275
Improvements and betterments, additions, ac- quisitions including equipment, court costs and other legal expenses, including compen- sation and disbursements of trustees of existing mortgages; Reorganization Mana- gers' compensation; Syndicate commissions; engraving of new securities; accountant and other expert fees and expenses; charges for listing securities on various stock exchanges; compensations and disbursements of commit-	

tees and other representing existing securities, including depositaries; organization, franchise and other taxes, including stamps, and other organization and miscellaneous expenses; contingencies, etc.; balance to New Company as additional working capital .....

6,822,622

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 \$25,000,000

The Receivers of the Railroad Company estimated that on January 2, 1916, the cash in hand, after providing funds for payment of Equipment Trust Obligations maturing up to January 2, 1916, inclusive, of interest on securities paid regularly during the receivership, and of the cost of current improvements, will be not less than the sum of \$3,500,000, the greater part of which should be available for the corporate purposes of the New Company.

XIX. Upon the issue of the new securities as heretofore stated, the capitalization and interest charges of the New Company will compare with the capitalization and interest charges of the Railroad Company as follows:

Capitalization of Railroad Company (excluding K. C., Ft. S. & M. System Bonds undisturbed) .....

\$202,076,386 00

Capitalization of New Company (excluding K. C., Ft. S. & M. System Bonds undisturbed) .....

272,297,516 00

Capitalization of Railroad Company (including K. C., Ft. S. & M. System Bonds undisturbed) .

\$256,800,000 00

Capitalization of New Company (including K. C., Ft. S. & M. System Bonds undisturbed) .....

327,211,188 00

[fol. 416] Fixed charge obligations of Railroad Company (excluding K. C., Ft. S. & M. System Bonds undisturbed) .....

\$252,076,386 00

Fixed charge obligations of New Company (excluding K. C., Ft. S. & M. System Bonds undisturbed) ..

133,188,500 00

Fixed charges of Railroad Company (excluding R. C. Pl. S. & M. System Bonds undisturbed)	\$22,000,000 36
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Fixed charges of New Company (excluding R. C. Pl. S. & M. System Bonds undisturbed)	\$6,541,000 36
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Contingent charges of New Company	4,365,000 00
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Total interest charges—fixed and contingent—of New Company	\$10,906,000 36
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Fixed charges of Railroad Company (including R. C., Pl. S. & M. System Bonds undisturbed)	\$24,500,000 00
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Fixed charges of New Company (including R. C., Pl. S. & M. System Bonds undisturbed)	\$9,170,000 00
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Contingent charges of New Company	4,365,000 00
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Total charges—fixed and contingent—of New Company	\$13,535,000 00
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XX. The Plan of Reorganization is thus designed to effect a reduction of the capitalization to an amount well within the value of the property and such a decrease in the annual fixed interest charges as will be well within the earning capacity of the New Company. The contraction of bonded indebtedness bearing a fixed interest is accomplished by the provisions of the Plan that holders of the present Refunding Mortgage Bonds shall accept for approximately 25% of their present bonds and holders of the present General Lien Bonds shall accept for approximately 75% of their present bonds, bonds the interest upon which is payable only out of income. The tables herewith set forth show that the following reductions will be accomplished by the reorganization:

(a) Reduction in total capitalization (excluding K. C., Pl. S. & M. System Bonds undisturbed), \$29,678,868 or 9.82%.

(b) Reduction in total capitalization (including K. C., Pl. S. & M. System Bonds undisturbed), \$29,678,868 or 8.31%.

(c) Reduction in fixed charge obligations (excluding K. C., Pl. S. & M. System Bonds undisturbed), \$118,887,886 or 47.16%.

(d) Reduction in fixed annual charges (excluding K. C., Pl. S. & M. System Bonds undisturbed), \$5,728,135 or 47.46%.

(e) Reduction in total annual charges, fixed and contingent (excluding K. C., Pl. S. & M. System Bonds undisturbed), \$1,302,205.92 or 11.28%.

(f) Reduction in fixed annual charges (including K. C., Pl. S. & M. System Bonds undisturbed), \$5,728,135 or 38.47%.

(g) Reduction in total annual charges, fixed and contingent including K. C., Pl. S. & M. System Bonds undisturbed), \$1,302,205.92 or 9.15%.

The present fixed charge obligations secured upon the property of the Railroad Company system, excluding the K. C., Pl. S. & M. System, are at the rate per mile of first main track of, \$63,809.95.

These bear fixed annual charges at the rate per mile of first main track of \$3,659.47.

As a result of the reorganization the New Company will have outstanding fixed charge obligations secured upon the property of the System, excluding the K. C., Pl. S. & M. System, at the rate per mile of first main track owned by the New Company of \$33,762.54.

These will bear fixed annual charges at the rate per mile of first main track of \$1,607.43.

The present fixed charge obligations secured upon the property of the Railroad Company's system, including the K. C., Pl. S. & M. System, are at the rate per mile of first main track of \$59,535.65.

These bear fixed annual charges at the rate per mile of first main track of \$2,887.90.

As a result of the reorganization the New Company will have outstanding fixed charge obligations secured upon the [Vol. 41\*] property of the Railroad Company's system, including the K. C., Pl. S. & M. System, at the rate per mile

of first main track owned or operated by the New Company of \$26,471.92.

These will bear fixed annual charges at the rate per mile of railroad of \$1,776.66.

The amount of fixed charge obligations per mile of railroad owned by the New Company will compare very favorably with those of other railroad companies in the same territory, as shown in the following table:

<i>Name of company</i>	<i>Fixed charge obligations per mile of road</i>
New Company (excluding K. C., Ft. S. & M. System Bonds undisturbed)	\$33,762 64
New Company (including K. C., Ft. S. & M. System Bonds undisturbed)	36,471 92
Missouri Pacific Railway Company	73,913.00
St. Louis, Iron Mountain & Southern Railway Company	45,070 00
Missouri, Kansas & Texas Railway Company	47,611 00

XXI. The consummation of the reorganization will also have resulted in the payment in cash of approximately \$16,700,000 of secured and preferred claims and will have provided a capital resource, first through the New Prior Lien Mortgage Bonds and then through the Adjustment Mortgage Bonds and Income Mortgage Bonds, for the acquisition of additional equipment, improvements and betterments and new mileage to meet the growing requirements of the New Company's business and the demands of shippers and the public, which will arise out of the growth and development of the territory which it serves.

XXII. The Plan provides for the participation in the reorganization of the holders of all securities which are not to remain undisturbed, including both the preferred and common stock, and provision is made permitting the Reorganization Managers to make adjustments with the holders of unsecured debt when the establishment of their claims under the general creditors bill shall have proceeded to a point making it practicable to do so. Preferred and common stock of the New Company is reserved for that purpose.

XXIII. A thorough and complete examination of the property of the Railroad Company has been made by a competent expert who expresses confidence in its value and [fol. 419] future. As a result of the report of this expert plans have been made for the further betterment and development of the property of the System, including reduction of grades, the elimination of grade crossings, the rebuilding of bridges and trestles, the installation of block signals and improved dispatching systems, repairing and rebuilding of equipment and the purchase of additional equipment at the rate of an annual expenditure of approximately \$5,000,000 for the next five years, and also for radical savings in operating charges, both through the improvements above outlined and through increased efficiency in various departments. The resources to enable the carrying out of this plan of betterments and improvements are provided through the cash to be raised and the securities reserved under the Plan of Reorganization.

XXIV. The System of the Railroad Company lies in a rapidly growing country with natural resources, the development of which promises a constantly increasing freight and passenger traffic to the System. Mr. J. W. Kendrick, in his report on the System, says:

“From an agricultural standpoint the Frisco is located as well or better than any of its neighbors serving the same territory.

With respect to the industrial development of its local territory it is believed to have made more rapid progress during the last few years than any other western line.

Based on past experience and statistics as to the growth of the country it is not unreasonable to expect that the tonnage handled by the System should increase at the rate of ten per cent. yearly for several years to come.

It serves the best of the coal fields in Kansas, Arkansas and Alabama, and also reaches the Oklahoma fields.

It reaches the heart of the gas belts of Kansas and Oklahoma.

The largest oil fields in Oklahoma are on its line, and much of the new development is tributary to its rails.

The lead and zinc deposits of the Joplin District are reached by it.

The last census showed that in the counties in Missouri traversed by the Frisco the population increased from 1, [fol. 420] 739,818 to 2,010,424, or 16%. A remarkable feature was that practically all the Frisco counties showed increased population while other counties showed decreases.

The five counties in Alabama through which the Frisco runs increased 49%.

In Arkansas the increase along the Frisco rails was 22%.

In Oklahoma the increase from 1907 to 1910 was 22%.

In four counties in southeast Missouri in the drainage districts the increase was 57%, and in the 12 counties in Arkansas and Missouri in the drainage districts the increase was 44%.

From the best information obtainable, the increase at the present time is equal to and in some cases in excess of that during the period shown.

The general territory of the System is susceptible of vast development and capable of producing a great deal more tonnage than at present, both on account of the large area of land which is not now tilled and that which can be tilled more extensively. The western portion of the territory served by the System, especially in Oklahoma, is as yet sparsely populated.

The most rapid increase in population, the most rapid development agriculturally and the greatest relative increase in the distribution of merchandise will occur in Oklahoma, and by reference to the map it will be found that the Frisco lines traverse this rich state in a very effective and comprehensive manner. The development of the oil districts in this state is progressing rapidly, and there is certain to be a continued increase in the production of oil in the recently exploited fields for many years to come. As stated, Oklahoma is sparsely populated at present. The richness of its soil makes it certain that its population, productivity and wealth will be enormously increased.

Adjacent to the west bank of the Mississippi River, from Cairo south, is an area of approximately 20,000,000- acres of the most productive soil known. For years the Mississippi Valley has been retarded in its development by frequent inundation. The floods of the last two years have been so severe as to bring the attention of the entire nation

to the question of their prevention, and with protection will come reclamation, and this vast body of land of such extreme fertility will, under development, add largely to the traffic possibilities of the Frisco.

[fol. 421] The drainage projects in Missouri and Arkansas contemplate the construction of 940 miles of main drainage ditches at an estimated expense of \$25,000,000 which will open to cultivation more than 3,600,000 acres of the best and most fertile land in the United States, most of which will be more conveniently served by this System than by any other road. The work was started about two years ago and is now well under way. The St. Louis and San Francisco Railroad has over 600 miles in this alluvial soil belt.

\* \* \* \* \*

Agriculturally the increase may be looked forward to with absolute certainty from increased population, increased acreage in cultivation, increased yield per acre, drainage projects, levee protection, improved methods, diversification of crops, intensive farming and selection of suitable crops.

Farming is becoming more profitable each year and is attracting a more intelligent and adaptable class of people.

The territory served by the Frisco is adapted to the growing of all the staple crops.

Probably not to exceed twenty per cent. of the available acreage tributary to the Frisco is now in cultivation.

As previously stated, Oklahoma perhaps offers as great possibilities as any part of the territory. Of the 1,500 miles of Frisco lines in this state 600 miles are in the western part and are just beginning to show the results of intelligent farming and effort. Drought and the failure to realize the necessity for planting the right sort of crop have discouraged the shiftless and hit-or-miss farmer and his place is being taken by the man who studies the conditions and only tries to grow those crops which experience has shown will succeed.

The Ozarks, usually considered only as a scenic attraction, with the exception of a limited amount of fruit growing, are beginning to come into their own. The commercial clubs and bankers' associations are bringing the possi-

bilities of this section in fruit growing, vineyards, poultry, dairying and cattle raising to the attention of the people, and an appreciable movement has already begun. The Frisco has several hundred miles of road in the Ozarks. The climate, soil and water conditions and the marketing opportunities are admitted to be of the best."

[fol. 422] The lines of the Railroad Company in many instances offer the shortest routes between important industrial centers. For instance, the Railroad Company offers the shortest line between St. Louis and Memphis, St. Louis and Dallas, St. Louis and Fort Worth, St. Louis and Joplin, St. Louis and Oklahoma City, Kansas City and Memphis, Memphis and Joplin, and Memphis and Tulsa, and its lines from Kansas City to Fort Worth, from Kansas City to Oklahoma City and from Kansas City to Tulsa are but little longer than those of the more favorably situated competitors. The relations of the Railroad Company with its connecting carriers are extremely friendly and it has preferential traffic arrangements with some of its more important connections which are greatly to the advantage of all parties.

XXV. The elements or factors which are entitled to consideration under the terms of the Missouri Public Service Commission Act in arriving at a determination of the fair value of the property, are as follows:

- (a) Original cost of construction.
- (b) Duplication cost.
- (c) Present condition.
- (d) Earning power at reasonable rates.

(a) Original Cost of Construction:

The Railroad Company, as at present constituted, includes a large number of lines which were originally constructed independently and were subsequently united into the single system. The System is the outcome of a reorganization of the property taken over by the Railroad Company upon its organization, the purchase of various lines, many of which had been in existence for many years and had themselves gone through reorganizations, and the purchase or building of new lines within more recent years.

So many of the lines of the System were constructed over thirty years ago and have been practically rebuilt since then that there are no adequate records or data available from which the original cost of the property can be ascertained with any substantial degree of accuracy. The cost to the Railroad Company of its lines of railway has been approximately \$253,251,255 and the cost of its equipment \$50,184,703, making the total book value of its property, [fol. 423] exclusive of securities of proprietary, affiliated, and controlled companies and other investments, \$303,435,958. Including such securities the total book value of all the property of the Railroad Company to be embraced in the reorganization is \$305,935,958. The present capitalization of the Railroad Company is represented by securities, both bonds and stock, which were issued in the prior reorganization as consideration for the property acquired by the present company or which have been issued on the refunding of such securities, and also additional securities issued from time to time on the acquisition of additional railroads and property. As hereinbefore stated, none of the present capitalization represents any franchise or permit.

(b) Duplication cost:

It appears from the report made to the petitioners by W. C. Nixon, one of the Receivers of the Railroad Company, that the value of the physical property used for railroad purposes in connection with the System to be embraced in the reorganization (including the K. C., Ft. S. & M. System) on the basis of cost of reproduction, is \$319,276,000, and that the value of securities representing property not embraced in the above mentioned valuation and other miscellaneous property which it is contemplated the New Company will acquire, is of the value of at least \$2,500,000. The appraised value of the property to be acquired by the New Company plus the cash which it is contemplated it will receive from the Receivers and the estimated amount of new cash provided for in the Plan, is thus in excess of the proposed capitalization of the New Company.

## (c) Present condition:

The plans which have been made for the betterment and improvement of the property have already been pointed out. The Receivers have been following these plans so far as possible since their appointment and advise that they have made large expenditures on account of maintenance of way and maintenance of equipment in order to improve the property generally. They have furnished the following table showing amounts (stated in thousands) expended and charged to operating expenses during the last four fiscal years:

[fol. 424]	Maintenance of way	Maintenance of equipment	Total
Year ending June 30, 1912....	\$5,118,000	\$5,521,000	\$10,639,000
Year ending June 30, 1913....	5,755,000	6,091,000	11,846,000
Year ending June 30, 1914....	7,762,000	7,492,000	15,254,000
Year ending June 30, 1915....	6,088,000	7,162,000	13,250,000

The amount charged to Operating Expenses for Maintenance of Way and Equipment during the period of Receivership compares with previous years as follows:

Yearly average for two years ending June 30, 1913 (Prior to Receivership) .....	\$11,242,000
Yearly average for two years ending June 30, 1915 (During Receivership) .....	14,252,000

The Receivers advise that during the years 1913, 1914 and 1915, there has been expended in the redemption of equipment trust obligations and for improvements and additions to property, the sum of \$8,155,939.24, which has not been taken into the capital account.

As a result of the improvements already made, the condition and earning capacity of the property has been notably advanced and now compares favorably with the physical condition of neighboring lines.

## (d) Earning power at reasonable rates:

Attention has already been called to the character of the territory in which the System of the Railroad Company lies and to the assurance which it gives of increased business for the System. Mr. Kendrick, in his report which has already been mentioned, says:

“With the opportunities and advantages offered in the Frisco territory, the System should certainly give as good an account of itself as any in the country and certainly justify the estimate for a large increase in each succeeding year.”

The officials of the Railroad Company have certified that the income account for four years ended June 30, 1915, after eliminating all items in connection with Chicago and Eastern Illinois Railroad stock, the New Orleans, Texas and Mexico lines and New Orleans Terminal Company (which it is not intended to vest in the New Company) is as follows:

[fol. 425]

	Year ending June 30, 1912	Year ending June 30, 1913	Year ending June 30, 1914	Year ending June 30, 1915	Average of 4 years
Operating Revenue .....	\$41,764,802.84	\$45,680,972.46	\$44,556,234.12	\$42,677,323.13	\$43,672,333.14
Rev. from operations other than transportation .....	335,560.89	339,317.57	367,334.57	297,249.58	339,865.65
Operating expenses, including taxes .....	42,100,363.73	46,050,290.03	44,923,568.00	42,974,572.71	44,012,198.79
Operating Income .....	30,667,171.89	32,768,534.41	35,419,814.82	31,875,648.06	33,682,792.45
Other income less hire of equipment .....	11,433,191.84	13,281,755.62	9,503,753.87	11,008,924.05	11,329,406.34
	685,470.76	889,540.48	655,191.42	571,842.70	700,511.34
Total Income .....	12,118,662.00	14,171,296.10	10,158,945.29	11,670,766.75	12,029,917.18

Add difference between rental paid to Frisco Construction Company (all of whose stock is owned by St. Louis and San Francisco Railroad Company, and the interest on Construction Company Equipment Certificates outstanding at the time and which are to be retired or provided for in the plan .....

	81,308.84	48,723.30	51,082.79	*29,084.12	38,010.29
Add for estimated net earnings of Qunah, Acme and Pacific Railway .....	12,199,971.44	14,220,029.40	10,210,028.08	11,641,682.63	12,067,927.88
					75,000.00
					12,142,927.88

• Deduct.

The Receivers advise that they charged out during the year ended June 30, 1915, for equipment retired, including depreciation and obsolescence, a total of \$1,977,700.52, of which \$1,426,827.30 was charged to operating expenses and \$550,873.22 to Profit and Loss.

It will be seen from the above table that the net income in each of the four years greatly exceeds the total fixed charges which will be borne by the New Company upon the consummation of the reorganization; and it has been estimated by experts that the New Company's net operating income can reasonably be expected so to increase from year [fol. 426] to year as to provide, within a comparatively short time, a substantial margin over all charges, both fixed and contingent.

Wherefore, the Reorganization Managers pray:

(a) That the reorganization of St. Louis and San Francisco Railroad Company set forth in the Plan of Reorganization submitted herewith, and said Plan, be approved and authorized.

(b) That the amount of capitalization of the New Company as set forth in said Plan, as well as the issue of all stocks and bonds and the execution and delivery of the mortgages therein set forth or mentioned, be authorized.

(c) That such further order or relief may be granted as may be just and proper.

Dated November 12, 1915.

J. & W. Seligman & Co., by (Signed) Frederick Strauss. Speyer & Co., by (Signed) Henry Ruh-lender.

STATE OF NEW YORK,

City and County of New York, ss:

Subscribed and sworn to before me this twelfth day of November, 1915.

(Signed) Francis F. Randolph, Notary Public, New York Co., No. 3344. Commission expires Mar. 30, 1916.

STATE OF MISSOURI:

Office of the Public Service Commission

I have compared the preceding copy with the original on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission, at Jefferson City, this 25th day of August 1924.

J. P. Painter, Secretary. (Seal.)

[fol. 427] BEFORE THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI

No. 974

In the Matter of the Application for Authorization of the  
Reorganization of ST LOUIS AND SAN FRANCISCO RAIL-  
ROAD COMPANY and for an Order Authorizing the Issue  
of Stocks and Bonds

May 15, 1916.

The application of J. & W. Seligman & Co. and Speyer  
& Co., as Reorganization Managers under a Plan and  
Agreement of Reorganization, dated November 1, 1915,  
which is hereto annexed and marked Exhibit A, respec-  
tively shows:

I. The applicant, J. & W. Seligman & Co., is a co-partner-  
ship engaged in the business of banking, whose principal  
place of business and post-office address is 1 South William  
Street, Borough of Manhattan, City and State of New York.  
The applicant, Speyer & Co., is a co-partnership engaged  
in the business of banking, whose principal place of busi-  
ness and post-office address is 26 Pine Street, Borough of  
Manhattan, City and State of New York. The applicants  
have jointly been constituted Reorganization Managers  
under said Plan.

II. St. Louis and San Francisco Railroad Company  
(hereinafter called the Railroad Company) was organized  
June 29, 1896, under the laws of Missouri, in connection  
with the reorganization of St. Louis and San Francisco  
Railway Company.

III. The lines of railroad of the Railroad Company and  
of its leased and auxiliary companies all of the capital stock  
of which it owns, which are to be embraced in the reorgan-  
ized System contemplated by the Plan, including the line  
of railroad of Quanah, Acme and Pacific Railway Company,  
extend in general from St. Louis and Kansas City, Mis-  
souri, to Wichita and Ellsworth, Kansas, Avard and Okla-  
homa City, Oklahoma, Quanah, Vernon, Dallas, Fort Worth  
and Menard, Texas, and Memphis, Tennessee, and Bir-

mingham, Alabama, and comprise about 5,154.71 miles of first main track in the following states:

(fol. 428) Alabama	132 49 miles
Arkansas	597 30 "
Kansas	629 97 "
Missouri	1,713 72 "
Mississippi	142 06 "
Oklahoma	1,497 36 "
Tennessee	18 34 "
Texas	422 27 "

The Railroad Company also operates 203.06 miles of main line trackage rights in the following states:

Missouri	6 18 miles
Oklahoma	23 26 "
Texas	174 02 "

IV. The properties and franchises of the Railroad Company have been in the hands of Receivers appointed by the United States District Court for the Eastern Division of the Eastern District of Missouri since May 27, 1913. On May 1, 1914, default was made in the payment of the interest then falling due on the \$69,264,000 of the Railroad Company's General Lien 15-20 Year Five Per Cent Gold Bonds; and on July 1, 1914, default was made in the payment of the interest which fell due on that date on the \$68,557,000 of Refunding Mortgage Gold Bonds. No interest has been paid on either issue since those defaults, and the principal of both issues has become due and payable and judgment therefor has been rendered against the Railroad Company. Defaults were also made in the payment of the principal and interest of the Railroad Company's \$2,250,000 Two Year Five Per Cent Secured Gold Notes and \$2,000,000 Two Year Six Per Cent Secured Gold Notes, and in the payment of interest on the Railroad Company's \$28,582,000 of New Orleans, Texas & Mexico Division First Mortgage Bonds, \$12,153,750 of Trust Certificates for Preferred Stock of Chicago and Eastern Illinois Railroad Company, and \$16,344,300 of Trust Certificates for Common Stock of Chicago and Eastern Illinois Railroad Company, and on the guaranty by the Railroad Company of the interest payable on \$14,000,000 of New Orleans

## Terminal Company First Mortgage Four Per Cent Gold Bonds.

V. In proceedings brought in the United [—] States Court for said Eastern District of the Eastern District of Wisconsin by conditions of the Railroad Company for a sale of the property of the Railroad Company for the benefit of its creditors, and by the respective trustees under the [—] [Vol. 229] Funding Mortgage and the General Lien Mortgage for the enforcement of said mortgages and the sale of the mortgaged property, a Final Decree was entered on March 22, 1896, authorizing the sale of all property of every character and description of the Railroad Company and providing that upon confirmation of the sale all the right, title, interest and equity of redemption of the Railroad Company, its conditions and constitutions, and of all persons claiming under it or them, or any of them, of, in and to said property and every part and parcel thereof shall be forever barred and extinguished.

VI. After a thorough examination of the affairs of the Railroad Company's System, and the relative value and earning capacity of its various lines, and a careful expert examination of the Railroad Company's operations and physical condition and of its financial requirements by Mr. J. W. Hamilton, Vice President, heretofore, now prepared and adopted by a committee representing holders of the Funding Mortgage Bonds under an Agreement dated June 26, 1894, by Spear & Co., representing General Lien 5 to 20 Year Gold Bonds under a "Confidential" Agreement dated May 28, 1895, and by E. C. Stewart, representing a committee of Holders formed by Office National des Valeurs Mobilières, Paris, its representative French holders of General Lien 5 to 20 Year Gold Bonds, French Savoy, and an attorney in law for a large number of holders of said bonds.

These have now assented to and become parties to said Plan and the Agreement annexed thereto, holders of the Funding Mortgage Bonds, General Lien Bonds and stock of the Railroad Company in the following amounts:

\$67,000,000 Funding Mortgage Bonds, at 96-25% net of a total issue of \$69,500,000;

\$62,767,000 General Lien Bonds, at 96-25% net of a total issue of \$65,200,000;

\$4,473,200 par value, of First Preferred Stock, or 89.46% out of a total issue of \$5,000,000;

\$14,929,300 par value, Second Preferred Stock, or 93.3% out of a total issue of \$16,000,000;

\$27,031,800 par value, of Common Stock, or 93.21% out of a total issue of \$29,000,000;

of the \$46,284,000 General Lien Bonds, other than the [fol. 430] French Series, \$43,977,600 or 95% have been deposited under the Plan. Of the \$23,000,000 of General Lien Bonds, French Series outstanding, \$18,808,300, or 81.77%, have been deposited under the Plan. That the remaining General Lien Bonds of the French Series have not been deposited is due largely to the fact that owing to the present European war the bonds have either been lost or are held by persons who cannot be located.

Of the entire stock of the Railroad Company there has been deposited under the Plan 464,343 shares, or 92.87.

Committees representing holders of the following securities have approved the provisions of the Plan with reference to such securities:

\$23,350,000 New Orleans, Texas & Mexico Division First Mortgage Gold Bonds, or 83% out of a total issue of \$28,128,000, the remaining bonds being largely held in France and either lost or held by persons who have not been located.

\$2,075,000 Two Year Five Per Cent Secured Gold Notes, or 92.22% out of a total issue of \$2,250,000;

\$2,565,000 Two Year Six Per Cent Secured Gold Notes, or 98.65% out of a total issue of \$2,600,000;

\$25,287,050 St. Louis & San Francisco Railroad Company Trust Certificates for Preferred and Common Stock of Chicago & Eastern Illinois Railroad Company, or 95.07% out of a total issue of \$26,598,250 in the hands of the public;

\$2,779,000 Ozark & Cherokee Central Railroad Company First Mortgage Five Per Cent Gold Bonds, or 96.5% out of a total issue of \$2,880,000.

It is intended by the Reorganization Managers to purchase at the sale referred to in Paragraph V, the lines of railroad of the Railroad Company and such other of its property as they may deem advisable and to transfer and

convey the property so purchased to a New Company which will issue to the Reorganization Managers in consideration for such property and for approximately \$13,500,000 cash which will be turned over to it or applied to its capital purposes out of the new cash provided by the Plan and the cash which it is estimated the Receivers will have on hand, its securities and stock as follows:

\$93,398,500	Prior Lien Mortgage Bonds, Series A, 4 per cent.
25,000,000	Prior Lien Mortgage Bonds, Series B, 5 per cent.
40,547,818	Adjustment Mortgage Bonds, 6 per cent.

[fol. 431]

35,192,000	Non-Cumulative Income Mortgage Bonds, 6 per cent.
7,000,000	Non-Cumulative Preferred Stock, 6 per cent.
48,480,000	Common Stock.

together with such additional amounts of Preferred Stock and Common Stock as may be required by the Reorganization Managers to settle claims of general creditors of the Railroad Company.

VII. Of the 5,358.17 miles of railroad constituting the Railroad Company's System and included in the reorganized System as stated in paragraph III, the lines of railroad owned directly by the Railroad Company comprise 3,522.59 miles of first main track.

VIII. The Railroad Company owns the entire capital stock of Kansas City, Fort Scott & Memphis Railway Company which in turn owns the entire capital stock of Kansas City, Memphis & Birmingham Railroad Company and of Kansas City and Memphis Railway & Bridge Company which owns the bridge over the Mississippi River near Memphis. The Railroad Company operates the lines of railroad of those Companies under ninety-nine year leases. These lines constitute approximately 1,210 miles of first main track, running in general from Kansas City, Missouri, to Memphis, Tennessee, and Birmingham and Bessemer, Alabama. The Railroad Company also owns the entire capital stock of Birmingham Belt Railroad Company, which operates a belt and terminal system in the City of Birmingham, consisting

of about fourteen acres of well located real estate, and 39.01 miles of track, serving thirty-four industries.

The properties described in this paragraph VIII are herein collectively called the K. C., Ft. S. & M. System.

IX. The Railroad Company owns the entire capital stock of the following companies which operate lines of railroad in Texas :

Fort Worth and Rio Grande Railway Com- pany .....	223.44 miles.
Brownwood North & Souther- Railway Com- pany .....	17.65 miles.
St. Louis-San Francisco & Texas Railway Company .....	85.32 miles.
Paris & Great Northern Railway Company .....	16.94 miles.

X. The Railroad Company owns or has interests in valuable terminals and terminal facilities at St. Louis, [fol. 432] Kansas City, Wichita, Memphis, Birmingham, Dallas and other points on the lines of the system.

XI. The Plan which is submitted herewith contemplates that all the lines of railroad and interests hereinbefore in paragraphs VII to X, inclusive, described shall be included in the reorganized System either by direct ownership or by ownership through securities or by the continuance of existing leases and their transfer to the New Company contemplated by the Plan, the bonds of the K. C., Ft. S. & M. System, however, to remain undisturbed.

XII. The Railroad Company also owns \$6,777,800 of common stock and \$8,102,500 of preferred stock of Chicago & Eastern Illinois Railroad Company, for which the Railroad Company issued its stock trust certificates to the amount of \$16,944,500 for common stock and \$12,153,750 for preferred stock, these certificates bearing guaranteed dividends at the rate of four per cent. per annum.

The Railroad Company also owns the entire capital stock of New Orleans, Texas & Mexico Railroad Company and has issued \$28,128,000 of its New Orleans, Texas & Mexico Division First Mortgage Gold Bonds, secured by a first mortgage on the property of the latter Company. In July, 1913, the New Orleans, Texas & Mexico lines were placed in the hands of separate receivers. They have been operated

independently of the Railroad Company's system since then, and are now in process of separate reorganization.

The difficulties of the Railroad Company were in large measure due to the failure of the Chicago and Eastern Illinois and New Orleans, Texas and Mexico Systems to earn the fixed charges which the Railroad Company had assumed in connection with its acquisition of interests therein, and it is not intended that the lines of those systems or the property of the New Orleans Terminal Company (which is operated in connection with the New Orleans, Texas & Mexico System), shall be included in the reorganization.

XIII. The capitalization of the Railroad Company as of June 30, 1915, (including equipment trust obligations and receivers' certificates and including the bonded debt of Quanah, Acme and Pacific Railway Company but excluding the outstanding \$100,000 of capital stock), aggregated \$356,890,056, upon which the Railroad Company bore fixed charges aggregating \$14,886,324, for a detailed statement of which reference is made to page 30 of the Plan. It appears from the petition of the Railroad Company filed with this Commission on or about May 27th, 1913, in connection with an application for authority to issue and sell \$761,000 New Orleans, Texas and Mexico Division First Mortgage Gold Bonds, that none of the outstanding stock or stock certificates or bonds, notes or other evidences of indebtedness of the Railroad Company have been issued or used in capitalizing the right to be a corporation or any franchise or permit or the right to own, operate or enjoy any such franchise or permit, or any contract, consolidation or lease.

Of the present capitalization the Plan contemplates that there shall be left undisturbed in the reorganization, securities of the Railroad Company to the amount of only \$14,790,000 (\$9,484,000 St. Louis & San Francisco Railway Company General Mortgage 5 per cent. and 6 per cent. Bonds maturing 1931, and \$5,306,000 Equipment Obligations maturing after July 1, 1917) together with the \$54,813,670 of bonds of the Kansas City, Ft. Scott & Memphis System.

XIV. As more fully set forth in the Plan, new securities will be created by the New Company as follows:

(1) Prior Lien Mortgage Bonds, limited to \$250,000,000 at any one time outstanding and secured by mortgage and deed of trust embracing all or substantially all the lines of railroad, franchises and equipment, terminals and other property (including stocks and bonds), except as otherwise dealt with under the Plan, acquired by the New Company pursuant to the Plan and also all additional property of every character (including stocks and bonds) at any time thereafter acquired by the New Company. On the Prior Lien Mortgage Bonds there are to be issued in the reorganization:

Series A, 4%, maturing July 1, 1950, redeemable at par with accrued interest	\$93,398,500
Series B, 5%, maturing July 1, 1950, redeemable at 105 with accrued interest	25,000,000
	<hr/> \$118,398,500

(2) Adjustment Mortgage Bonds, limited to \$75,000,000 at any one time outstanding and secured by mortgage and deed of trust on the properties embraced in the Prior Lien Mortgage and from time to time becoming subject thereto, subject to the Prior Lien Mortgage. The Adjustment Mortgage Bonds are to bear interest payable prior to the maturity of the principal, only out of the Available Net [fol. 434] Income of the New Company as shall be defined in the Adjustment Mortgage. The interest on the Adjustment Mortgage Bonds will be cumulative. On the Adjustment Mortgage Bonds there are to be issued in the reorganization:

Series A, Six Per cent., carrying interest from July 1, 1915, maturing July 1, 1955, and redeemable at par and accrued interest, \$40,547,818.

(3) Income Mortgage Bonds, limited to \$75,000,000 at any one time outstanding and secured by mortgage and deed of trust on the properties embraced in the Prior Lien Mortgages and from time to time becoming subject thereto, subject to the Prior Lien Mortgage and the Adjustment Mortgage. The Income Mortgage Bonds are to bear interest, payable only out of the Available Net Income of the New Company as shall be defined in the Income Mortgage, but only after the payment therefrom of all interest on the

**Adjustment Mortgage Bonds.** The interest on the Income Mortgage Bonds will not be cumulative. Of the Income Mortgage Bonds there are to be issued in the reorganization:

Series A, Six Per Cent., ranking for interest from July 1, 1915, maturing July 1, 1960, redeemable at par, and interest for proportionate part of current interest period, \$35,-192,000.

(4) Preferred Stock to an authorized amount not exceeding \$200,000,000, entitled to receive for any fiscal year dividends at such rate not exceeding Seven Per Cent. per annum, as may be from time to time determined by the Board of Directors at the time of issue thereof and stated in the certificates therefor but such dividends will not be cumulative. No dividend shall be paid on the Preferred Stock for any fiscal year other than out of the net income for such fiscal year applicable to the payment of dividends, unless for the two fiscal years next preceding, the full interest shall have been paid on the outstanding income Mortgage Bonds. The Preferred Stock may be made in whole or in part redeemable at the election of the Company on such terms, on such notice and at such premiums as the board of directors may determine. Of the Preferred Stock there will be issued in the reorganization:

Six Per Cent. Stock, redeemable, if allowed by law, at par and proportionate dividend for current dividend period, \$7,000,000.

[fol. 435] (5) Common Stock to an authorized amount not exceeding \$250,000,000, of which there will be issued in the reorganization \$48,480,000.

For a statement of the disposition to be made by the Reorganization Managers of the securities to be issued to them by the New Company in consideration for cash and properties as hereinbefore stated, reference is made to the Plan.

XV. Upon the consummation of the reorganization and the retirement of the securities dealt with under the Plan the aggregate capitalization of the New Company, excluding K. C., Ft. S. & M. System Bonds which are to be undis-

turbed, will be approximately \$264,408,318, or a reduction of 12.47% in the present capitalization, while the capitalization of the New Company, including K. C., Ft. S. & M. System Bonds, will be approximately \$319,221,988, or a reduction of 10.55%. The annual fixed charges of New Company, including K. C., Ft. S. & M. System Bonds, will be approximately \$9,158,189.68 or a reduction of 38.47% from the fixed charges of the Railroad Company, while the total annual charges—fixed and contingent—of the New Company will be approximately \$13,702,578 or \$1,183,745 less than the annual fixed charges of the Railroad Company. For a detailed statement of the capitalization of the New Company upon the consummation of the reorganization reference is made to page 31 of the Plan.

XVI. In another proceeding with reference to a proposed reorganization of the Railroad Company, the Public Service Commission of Missouri, by an order entered February 29, 1916, modifying its order of December 22, 1915, decided that the then value of the property proposed to be embraced in the reorganization was sufficient to warrant the issue by a new company acquiring it, of securities and stock to an aggregate par value of \$321,688,886.

The elements or factors which are entitled to consideration under the terms of the Missouri Public Service Commission Act in arriving at a determination of the fair value of the property, are as follows:

(a) Original cost of construction.

(b) Duplication cost.

[fol. 436] (c) Present condition.

(d) Earning power at reasonable rates.

(a) Original cost of construction:

The Railroad Company, as at present constituted, includes a large number of lines which were originally constructed independently and were subsequently united into the single system. The System is the outcome of a reorganization of the property taken over by the Railroad Company upon its organization, the purchase of various lines, many of which had been in existence for many years

and had themselves gone through reorganizations, and the purchase or building of new lines within more recent years. So many of the lines of the System were constructed over thirty years ago and have been practically rebuilt since then that there are no adequate records or data available from which the original cost of the property can be ascertained with any substantial degree of accuracy. The cost to the Railroad Company of its lines of railway has been approximately \$253,251,255 and the cost of its equipment \$50,184,703, making the total book value of its property exclusive of securities of proprietary, affiliated, and controlled companies and other investments, \$303,435,958. Including such securities the total book value of all the property of the Railroad Company to be embraced in the reorganization (other than approximately \$13,500,000 of cash) is \$305,935,958. The present capitalization of the Railroad Company is represented by securities, both bonds and stock, which were issued in the prior reorganization as consideration for the property acquired by the present company or which have been issued on the refunding of such securities, and also additional securities issued from time to time on the acquisition of additional railroads and property. As hereinbefore stated, none of the present capitalization represents any franchise or permit.

(b) Duplication cost:

It appears from a report made to the petitioners by W. C. Nixon, one of the Receivers of the Railroad Company, that the value of the physical property used for railroad purposes in connection with the System to be embraced in the reorganization (including the K. C., Ft. S. & M. System) on the basis of cost of reproduction, is \$319,276,000, and that the value of securities representing property not embraced in the above mentioned valuation and other miscellaneous [fol. 437] property which it is contemplated the New Company will acquire, is of the value of at least \$2,500,000. The appraised value of the property to be acquired by the New Company plus the \$13,500,000 cash which it is contemplated it will receive or which will be applied to its capital purposes from the Receivers' cash and the new cash provided for in the Plan, is thus considerably in excess of the proposed capitalization of the New Company.

## (c) Present condition:

A thorough and complete examination of the property of the Railroad Company has been made by a competent expert, Mr. J. W. Kendrick, who expresses confidence in its value and future. As a result of his report plans have been made for the further betterment and development of the property of the System, including reduction of grades, the elimination of grade crossings, the rebuilding of bridges and trestles, the installation of block signals and improved dispatching systems, repairing and rebuilding of equipment and the purchase of additional equipment at the rate of an annual expenditure of approximately \$5,000,000 for several years, and also for radical savings in operating charges, both through the improvements above outlined and through increased efficiency in various departments. The resources to enable the carrying out of this plan of betterments and improvements are provided through the cash to be raised and the securities reserved under the Plan of Reorganization. The Receivers have been following these plans so far as possible since their appointment and advise that they have made large expenditures on account of maintenance of way and maintenance of equipment in order to improve the property generally. They have furnished the following table showing amounts (stated in thousands) expended and charged to operating expenses during the last four fiscal years.

	Maintenance of way	Maintenance of equipment	Total
Year ending June 30, 1912.....	\$5,118,000	\$5,521,000	\$10,639,000
Year ending June 30, 1913.....	5,755,000	6,091,000	11,846,000
Year ending June 30, 1914.....	7,762,000	7,492,000	15,254,000
Year ended June 30, 1915.....	6,088,000	7,162,000	13,250,000

The amount charged to Operating Expenses for Maintenance of Way and Equipment during the period of Receivership compares with previous years as follows:

Yearly average for two years ending June 30, 1913 (prior to Receivership) .....	\$11,242,000
Yearly average for two years ending June 30, 1915 (during Receivership) .....	\$14,252,000

[fol. 438] The Receivers advise that during the years 1913, 1914 and 1915, there has been expended in the redemption of equipment trust obligations and for improvements and additions to property, the sum of \$8,155,939.24 which has not been taken into the capital account.

As a result of the improvements already made, the condition and earning capacity of the property has been notably advanced and now compares favorably with the physical condition of neighboring lines.

(d) Earning power at reasonable rates:

Mr. J. W. Kendrick who, as hereinbefore stated, has made a thorough investigation of the Railroad Company's System, reports that the industrial development of its territory has been more rapid during the last few years than that of any other western line. He has pointed out that the system serves one of the best agricultural territories of the country in addition to coal fields in Kansas, Arkansas and Alabama, gas and oil fields in Kansas and Oklahoma and lead and zinc fields in Missouri. The territory of the system is not as yet thickly populated but is rapidly increasing in population and in the development of its agricultural lands and oil and gas fields.

Mr. Kendrick in the report already mentioned says:

"It is not unreasonable to expect that the tonnage handled by the System will increase at the rate of ten per cent. yearly for several years to come."

The Receivers have certified that the income account of the properties which are intended to be vested in the New Company for the nine months of the current fiscal year ended March 31, 1916, is as follows:

Operating Revenue .....	\$35,524,311.63
Revenue from operations other than transportation .....	277,489.80
	<hr/>
	\$35,801,801.43
Operating expenses including taxes .....	25,794,489.47
	<hr/>
Operating income .....	\$10,007,311.96
Other income less hire of equipment .....	506,181.82
	<hr/>
Total income .....	\$10,513,493.78

Add difference between rental paid Frisco Con. Co. (all of whose stock is owned by St. L. & S. F. R. R. Co.) and the interest on Construction Co. Equipment Certifi- cates outstanding at the time and which are to be retired or provided for in the Plan . . . . .	28,108 47
Add for net earnings of Quanah, Aeme & Pacific Ry. . . . .	81,016 98

Total income of property to be em- braced in reorganization . . . . .	\$10,622,619 23
--	-----------------

[fol. 439] The net earnings during the current fiscal year have therefore been at the rate of \$14,163,492 per annum which is more than enough to provide for the entire fixed and contingent charges of the New Company and represents a return of approximately 4½% upon the entire capitalization of the New Company. With the increased tonnage which Mr. Kendrick says can be anticipated, it is expected that the annual net earnings will in the near future exceed \$15,000,000, and Mr. Kendrick estimates that by 1924 they should amount to \$20,000,000.

Wherefore, the Reorganization Managers pray:

(a) That the reorganization of St. Louis and San Francisco Railroad Company set forth in the Plan of Reorganization submitted herewith, and said plan, be approved and authorized.

(b) That the execution and delivery by the New Company organized under said Plan, of its Prior Lien Mortgage, its Adjustment Mortgage and its Income Mortgage, and the mortgaging thereunder of all of the railroads and other properties of said New Company at any time acquired by it, all as provided by said Plan, be authorized;

(c) That said New Company be authorized to issue and deliver to the Reorganization Managers, in consideration for the property and cash to be acquired by it or applied to its use as provided in said Plan, its securities and stock as follows:

\$93,398,500 Prior Lien Mortgage Bonds, Series A, four Per Cent;

\$25,000,000 Prior Lien Mortgage Bonds, Series B, Five Per Cent;

\$40,547,818 Adjustment Mortgage Bonds, Six Per Cent.

\$35,192,000 Non-cumulative Income Mortgage Bonds, Six Per Cent;

\$7,000,000 Non-cumulative Preferred Stock, Six Per Cent;

\$48,480,000 Common Stock;

together with such additional amount of Preferred Stock and Common Stock as this Commission may hereafter authorize to enable the Reorganization Managers to settle claims of general creditors of the Railroad Company.

[fol. 440] (d) That such other and further order and relief may be granted as may be just and proper.

Dated May 15, 1916.

J. & W. Seligman & Co., by Frederick Strauss,  
Speyer & Co., by (Just Houchens)?

STATE OF NEW YORK,

City and County of New York, ss:

Subscribed and sworn to before me this sixteenth day of May 1916.

Daniel B. O'Connor, Notary Public, New York  
County, No. 93. Commission expires Mar. 30,  
1917. (Seal.)

STATE OF MISSOURI:

### Office of the Public Service Commission

I have compared the preceding copy with the original on file in this office, and I do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and seal of the Public Service Commission, at Jefferson City, this 21st day of August, 1924.

J. P. Painter, Secretary. (Seal.)

Mr. Murphy: We offer in evidence, then, the applications or petitions of the St. Louis-San Francisco Railway Company, made by it or through the reorganization managers under the plan of reorganization, or made direct by the re-

organization managers, for authority to issue securities, to the Public Service Commission of the State of Missouri.

Mr. Miller: We object to them as wholly immaterial to any issue.

The Master: They will be received subject to the objection.

To which ruling of the Master the defendant then and there excepted.

Mr. Murphy: I now offer in evidence the opinions and orders of the Public Service Commission of the State of Missouri on the applications and petitions made to the [fol. 441] Public Service Commission of Missouri by the reorganization managers, the St. Louis-San Francisco Railway Company through its reorganization managers, and the St. Louis-San Francisco Railway Company, and on the answers thereto, and on interventions filed therein, for authority to issue securities in the State of Missouri.

Mr. Miller: Same objection.

Objection overruled.

To which ruling of the Master the defendant then and there fully excepted.

Mr. Murphy: They are found in volumes 3 and 4 of the reports of the Public Service Commission of the State of Missouri.

Said applications are in words and figures as follows, to-wit:

#### Ex. 17B

#### Case No. 815

In the Matter of Application of J. & W. SELIGMAN AND COMPANY and SPEYER AND COMPANY, as Reorganization Managers of the Reorganization of the St. Louis & San Francisco Railroad Company; and for an Order Authorizing the Issue of Stocks and Bonds

Submitted November 29, 1915. Decided December 22, 1915

1. Reorganization: Jurisdiction: Capitalization: Public policy: Valuation.—As long as a plan and agreement for the reorganization of a railroad corporation is within the constitutional and statutory provisions of this State this

Commission has jurisdiction and authority not only to determine the amount of capitalization and the fair value of the property included in the reorganization, but to determine whether the plan and agreement of said proposed reorganization is against public policy, and if so found to be, the Commission would be fully warranted in refusing to lend its approval to any such plan and agreement of reorganization.

2. Reorganization: Plan and Agreement: Valuation: Securities.—Section 62, P. S. C. L., requires this Commission to take into consideration the original cost of construction, duplication cost, present condition, earning power at reasonable rates, all other relevant matters, any additional sum or sums as shall be actually paid in cash, and may make due allowance for discount on bonds in passing upon the [fol. 442] plan and agreement for the reorganization of a railroad corporation.

3. Capitalization: Reorganization: Stocks and Bonds.—The term "capitalization" as used in sec. 62, P. S. C. L., relating to reorganization of railroad corporations, includes all stocks and bonds and other evidences of indebtedness, and obligations in the nature of bonds and trust certificates of a corporation undergoing reorganization are capital obligations within the meaning of said section.

4. Reorganization: Working capital: Efficient Organization.—Although a company may not have been working successfully financially, yet the fact that the property is being successfully operated with an efficient working organization and in need of working capital should be taken into consideration in passing upon the plan or agreement for reorganization of a railroad corporation.

5. Reorganization: Discount on Bonds.—Due allowance for discount on bonds should be considered along with other elements of value in passing upon the plan and agreement for reorganization of a railroad corporation.

6. Capitalization: Valuation: Practice and procedure.—This Commission is not bound in a rate controversy by the amount of capitalization issued by any public utility, but will take into consideration capitalization as one element

in arriving at the fair present value for rate-making purposes.

7. Reorganization: Fair and Equitable terms.—A plan and agreement for the reorganization of a railroad corporation should be based on fair and equitable terms, providing for the payment of all honest obligations of the old company, including the non-secured claims.

8. Reorganization: Constitutional law: Policy of the state.—A plan and agreement for the reorganization of a railroad corporation providing that certain bonds may be made convertible at the option of the holders into preferred stock (or, if converted during the life of the voting trust, into trust certificates therefor) without the consent of the holders of the common stock is inconsistent with the express language of sec. 10, art. XII, Constitution, and sec. 3065, R. S. 1909, and the policy of this State as thereby evidenced.

9. Policy of the State.—Stockholders to control corporations. It is the policy of this State that the stockholders, who own the equity in the corporation, and not the bond-[fol. 443] holders, who are interested only to the extent of their claims, shall have the control and management of the corporation.

10. Reorganization Expenses: Accounting.—The Commission feels that reasonable and just expenses for counsel and reorganization managers and other various necessary expenses in connection with a reorganization of this magnitude should be paid, yet it will not approve of extravagant or wasteful expenditures; and while it will authorize the blanket expenditure as provided in the petition not to exceed \$6,833,631.00, it will require that a properly itemized statement for each proposed expenditure shall be submitted to the Commission for the Commission then to determine the specific amount to be allowed therefor.

11. Reorganization: Stock and Bond Bonuses: Accounting: Valuation.—The Commission does not find the fair value of the property as set out elsewhere in this report to warrant the issuance of any additional amount of bonds or stocks to be given as bonuses as provided in the plan as herein proposed, and same is disallowed.

12. Reorganization: Accounting: Increase Interest Rate.—An allowance of an increase in the rate of interest from five per cent to six per cent on the ground of the disapproval of a five per cent bonus does not meet with the approval of the Commission.

13. Reorganization: Voting Trustees: Control of Company.—A plan and agreement for the reorganization of a railroad company which places the selection of voting trustees, and consequently the election of the board of directors and the management and control of the company, in the hands of the bondholders instead of the stockholders; that permits any voting trustee to "act as a director or officer of the railroad company" and to "contract with the railroad company" or "be or become pecuniarily interested in any matter or transaction in which the railroad company may be a party;" that provides that the voting trustees "assume no responsibility in respect to such management or in respect to any action taken by them or in pursuance to their consent thereto as such stockholders, or pursuant to their votes so cast, and that no voting trustee incurs any responsibility by reason of any error of law or of any matter or thing done or omitted under the agreement except for his own individual malfeasance;" and that provides that preferred stock may be issued by the voting trustees when authorized by the "holders of a majority in amount of the certificates for preferred stock outstanding, [fol. 444] and of a majority in amount of such part of the trust certificates for common stock as shall be represented at such meeting," is not approved.

Held by McQuillin, Commissioner in separate concurring opinion, that while the Commission is not a court and is not possessed of any judicial attributes whatever, it is conceded that the avowed functions of the Commission is to seek to protect the public interests, and it is idle to expect that the Commission should sanction a plan without reasonable assurance of its fairness, equity and entire legality. The legality may be ascertained only by knowing the essential mandatory legal requirements; these may be known only from an examination of the law; and the intention of the law may be arrived at only from its reasonable interpretation. Such powers may be exercised by any

public officer, whether executive or administrative or merely ministerial. The public officer in all his official actions must follow, not disregard, the law.

H. S. Priest, R. T. Swaine and W. F. Evans for the applicants.

J. D. and L. C. Johnson for bondholders of the Cape Girardeau & Northern Railroad Company.

M. N. Sale and David Goldsmith as stockholders and other investors.

Sam Lazarus pro se.

J. A. Hope for the Cape Girardeau & Northern Railroad Company.

S. S. Gregory and S. O. Levison for B. F. Yoakum.

Joseph T. Davis for Citizens Bank of Union.

### Report of the Commission

ATKINSON, Chairman, and KENNISH, Commissioner:

#### I

#### The Issues

This is a proceeding by petitions of J. & W. Seligman & Company and Speyer & Company, as reorganization managers, for the reorganization of the St. Louis & San Francisco Railroad Company, now in the hands of receivers, representing the several committees of bondholders and stockholders, who now come before this Commission proposing a plan of reorganization under a plan and agreement, dated November 1, 1915. It is contemplated, as set [fol. 445] forth in the petition of the applicants, that the various properties will be sold under foreclosure of the refunding mortgage, or the general lien mortgage, or both mortgages, or under the general creditor's bill, or otherwise dealt with, and a successor new company will be organized. The various details of the plan will be further stated in this opinion after we first dispose of certain questions presented for our consideration as to the jurisdiction of the Commission over the matters involved.

## II

## Jurisdiction of the Commission

(1) The first question presented for our consideration and investigation in this case is, what matters in it are open to our inquiry and decision? Section 62 of the Public Service Commission law of this State provides for the reorganization of railroad corporations as follows:

“Reorganizations of railroad corporations, street railroad corporations and common carriers shall be subject to the supervision and control of the Commission and no such reorganization shall be had without the authorization of the Commission. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the Commission which, in making its determination, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash: Provided, however, that the Commission may make due allowance for discount of bonds. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the Commission. The Commission may by its order impose such condition or conditions as it may deem reasonable and necessary.”

It is to be noted that the first sentence of this section provides that reorganizations of railroad corporations shall be subject to the jurisdiction and control of the Commission and that no such reorganization shall be had without the authorization of the Commission. The section further provides the rule for determining and fixing the value of the property involved in such reorganization. The section further provides that in such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as [fol. 446] is authorized by the Commission, which, in making its determination, shall not exceed the fair value of the property involved, which is to be determined by taking

into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters, and any additional sum or sums as may be actually paid in cash. A further provision is made that the Commission may make due allowance for discount of bonds. This statute further provides that any reorganization agreement, before it becomes effective, shall be amended so that the amount of capitalization shall conform to the amount authorized by the Commission. The last sentence of the section is broad and sweeping, and provides that the Commission may by its order impose such condition or conditions as it may deem reasonable and necessary in the granting of such orders of reorganization.

A proper understanding of our statute will necessitate a discussion of some of the laws of the State of New York, from which it was taken in a large measure. The Public Service Commission law of the State of New York was enacted in 1907, and did not contain any section on the reorganization of railroads in its original enactment. In the year 1912, section 55a (chapter 289, L. 1912) was added to the New York Statute, which reads as follows:

“1. Reorganization of railroad corporations, street railroad corporations and common carriers pursuant to sections nine and ten of the stock corporation law and such other laws as may be enacted from time to time shall be subject to the supervision and control of the Proper Commission and no such reorganization shall be had without the authorization of such Commission.

“2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the Commission which, in making its determination, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash, provided, however, that the Commission may make due allowance for discount of bonds. Any reorganization agreement before it becomes effective shall be amended so that

the amount of capitalization shall conform to the amount authorized by the Commission."

[fol. 447] It will be noted on reading the New York section above set forth that reference is made to sections 9 and 10 of the Stock Corporation law of that state in connection with reorganizations of railroad corporations. A better understanding of the New York section will be had by setting forth said sections 9 and 10 of the Stock Corporation law of that state (chapter 59, Consolidated Laws, 1909), which provide as follows:

"Sec. 9. When the property and franchise of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of an execution issued thereon, and the purchaser, his assignee or grantee shall have acquired title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for an incorporation for similar purposes, at least two-thirds of whom shall be citizens of the United States and one shall be a resident of this State, and they may become a corporation and take and possess the property and franchises thus sold, and which were at the time of the sale possessed by the corporation whose property shall have been so sold, upon making and acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court by whose authority the sale had been made, with the date of the judgment or decree authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

"1. The name of the new corporation intended to be formed by the filing of such certificate; and the place where its principal office is to be located.

"2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

"3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and postoffice addresses of the directors for the first year. They may insert in such certificate any provisions relating to the new corporation, or its management, contained in any plan or agreement which may have been entered into [fol. 448] as provided in section ten of this chapter. Such corporation shall be vested with, and be entitled to exercise and enjoy, all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in, the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on that corporation. Any proceedings heretofore taken in substantial compliance with this section as hereby amended, and any and all incorporations based thereon are hereby ratified and confirmed.

"Sec. 10. At or previous to the sale the purchasers thereat, or the persons for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of any creditors, mortgagees and stockholders, or any of them, of the corporation owning such property and franchises at the time of sale, and for the representation of such interests in the bonds or stock of the new corporation to be formed, and may therein regulate voting by the holders of the preferred and common stock at any meeting of the stockholders, and may provide for, and regulate voting by the holders and owners of any or all of the bonds of the corporation foreclosed; or of the bonds issued or to be issued by the new corporation; and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must not be inconsistent with the laws of the State, and shall be binding upon the corporation until changed as therein provided, or as otherwise provided by law. The new corporation, when duly organized pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt,

claim or liability of the former corporation upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization, and may establish preference in favor of any portion of its capital stock and may divide its stock into classes; but the capital stock of the new corporation shall not exceed in the aggregate the maximum amount of stock mentioned in the certificate of incorporation."

[fol. 449] Section 57 of the Public Service Commission law of this State is substantially the same as section 55 of the Public Service Commission law of New York. We find no material changes between the two sections. These two sections provide for the regulation and supervision of stocks, bonds, notes and other evidence of indebtedness to be issued by railroad corporations generally, but do not refer specifically to re-organizations. The New York Commissions at first held that the reorganization of railroads as provided for under sections 9 and 10 of said stock corporation law was subject to the jurisdiction of the Commissions of that state within the meaning of said section 55 of the Public Service Commission law. In *re Adirondack Electric Power Co.*, 3 P. S. C., N. Y. (2nd Dist.) 242; and *Re Organization of Third Avenue Railroad Co.*, 2 P. S. C., N. Y. (1st Dist.) 94. The last case upon appeal went to the appellate court and was there reversed. *People ex rel. Third Ave. R. Co. vs. Public Serv. Com.*, 145 App. Div. 318. The Public Service Commission took this case on appeal to the New York Court of Appeals, which affirmed the opinion of the appellate division, *People ex rel. T. A. Ry. Co. vs. Public Serv. Com.*, 203 N. Y. 299. It was held by the two appellate courts that sections 9 and 10 of said stock corporation law was not under the supervision of the Public Service Commission, except to see that the stocks and bonds were issued for the proper purposes as provided in said section 55 of the Public Service Commission law. In other words, that the Public Service Commission had no jurisdiction to fix the value or to pass upon the terms of the plan and agreement, and that the provisions of the Public Service Commission law did not repeal the provisions of said sections 9 and 10 of the stock corporation law. Following these decisions, we may safely assume that

the enactment of section 55a placing the supervision of reorganizing railroad companies under the jurisdiction of the Public Service Commission of New York followed.

In the case of *People ex rel. W. S. R. R. Co. vs. Public Serv. Com.*, 210 N. Y. 456, it is held that where no plan and agreement of reorganization is agreed upon and adopted as provided for in said sections 9 and 10 of the stock corporation law, that such new railroad corporation, even though purchasing the assets of an old insolvent corporation, comes under the supervision of said section 55 of the Public Commission law of that state. This last opinion modified and affirmed the opinion in the case of *People ex rel. West Chester Street Railroad Co. vs. Public Service Commission*, 158 App. Div. 251.

[fol. 450] In this State we find no provisions of the corporation laws of this State corresponding in any way to sections 9 and 10 of the Stock corporation law of the State of New York. Our attention has not been called to any section governing reorganization of railroad corporations in this State, except section 62 of the Public Service Commission law. This section seems to be the only section which governs the adoption of a plan and agreement for reorganizing a railroad corporation.

As we understand the effect of the holdings of the several appellate courts of the State of New York in their decisions construing reorganization of railroad corporations under the provisions of sections 9 and 10 of the stock corporation law, and the provisions of the Public Service Commission law of that state, in relation to reorganizations of railroad corporations, is that public policy assures to the stockholders, bondholders, and creditors of a railroad corporation, that in case of the foreclosure of any mortgage on the property their interests will not be wiped out and that they will have an opportunity to participate in the reorganization of the road and to preserve to some extent at least their interests, and that the paramount purpose of the Public Service Commission law was for the protection and enforcement of the rights of the public.

In the case of *People ex rel. Third Ave. R Co. vs. Public Serv. Com.*, 145 App. Div. l. c. 327-8, the court in discussing the subject said:

"In *Louisville Trust Co. vs. Louisville etc. R. Co.* (174 U. S. 674) Mr. Justice Brewer, after stating that on foreclosure only the mortgagees or their representatives can be considered as probable purchasers, said: 'We must, therefore, recognize the fact, for it is a fact of common knowledge, that, whatever the legal rights of the parties may be, ordinarily foreclosures of railroad mortgages mean that the destruction of all interest of the mortgagor and a transfer to the mortgagee alone of the full title, but that such proceedings are carried on in the interests of all parties who have any rights in the mortgaged property, whether as mortgagee, creditor or mortgagor.'

"The foregoing citation and our own statute sufficiently establish the accepted public policy that railroad mortgages are differentiated from ordinary real estate mortgages given by a private individual. The railroads are great public enterprises subserving a useful and necessary public need. It is in the public interest that they be not destroyed [fol. 451] but continued and preserved. The vast sums of money required to construct and maintain them are obtained from numbers of people who purchase the stock and from others who purchased the bonds secured by mortgage upon property and franchises. A very large number of railroad corporations have gone through periods of reorganization. It is not to be doubted that the investments made in railroad securities have to a considerable extent been influenced by the knowledge that public policy expressed by statute and decision has assured to stockholders, bondholders and creditors that, in case of foreclosure, their interests will not be entirely wiped out but that an opportunity for reorganization is granted under the law, with the right to participate therein and to secure the preservation to some extent at least of their interests. Our own statute, cited *supra*, provides that at or previous to the sale the purchasers thereat, or the persons for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of any creditors, mortgagees and stockholders, or any of them, of the corporation owning such property and franchises at the time of sale, and for the representation of such interests in the bonds or stock of the new corporation to be formed, and provides that

such plan or agreement shall be written into and become a part of the certificate of the new corporation to be formed in pursuance of such plan, which plan, therefore, becomes the charter of the reorganized company. This has been the policy of the State of New York for upwards of fifty years."

It is well to note here that section 3 of the Public Service Commission law provides as follows:

"A public service commission is hereby created and established, which said public service commission shall be vested with and possessed of the powers and duties in this act specified, and also all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this act."

As heretofore stated, reorganization of railroad corporations under the provisions of section 62, *supra*, of the Public Service Commission law of the State shall be subject to the supervision and control of the Commission and no such reorganization shall be had without the authorization of the Commission. The Missouri Legislature, in adopting said section 62, added thereto the last sentence, [fol. 452] which provides: "The Commission may by its order impose such condition or conditions as it may deem reasonable and necessary." It is to be noted that under the terms of section 10 of said stock corporation law, it is specifically provided: "Such plan or agreement must not be inconsistent with the laws of this state." We have no hesitancy in holding that under the powers of this Commission governing reorganizations as set forth in said section 62, *supra*, it would not be warranted in approving or giving its assent to any plan and agreement which contained any provision in violation of the Constitution or any of the statutes of this State.

We think, giving this statute a fair and reasonable construction, that this Commission has the jurisdiction and authority not only to determine the amount of capitalization and the fair value of the property included in the reorganization, but to determine whether the plan and agreement of such proposed reorganization is against public policy, as hereinbefore stated, and if so found to be, the Commission would be fully warranted in refusing to lend

its approval to any such plan and agreement of reorganization.

### III

#### Plan and Agreement of Reorganization

While the plan and agreement of reorganization as submitted is quite voluminous, containing some forty-nine pages of printed matter, we deem it unnecessary to set the same out at length. We think it sufficient to state the material points of the plan and those which are opposed or contested by the various interveners and protestants.

The properties and franchises of the St. Louis & San Francisco Railroad Company (hereinafter called the Railroad Company) have been in the hands of receivers appointed by the United States District Court at St. Louis since May 27, 1913. That company was organized under the laws of this State in 1896, taking over the properties of the former St. Louis & San Francisco Railway Company at that date.

The lines of railroad of the Railroad Company and of its leased and auxiliary companies, all of the capital stock of which it owns, which are to be embraced in the reorganized system contemplated by the plan, including the line of railroad of Quanah, Acme & Pacific Railway Company, extend in general from St. Louis and Kansas City, Missouri, to Ellsworth, Kansas; Waynoka, Oklahoma: Oklahoma City, [fol. 453] Oklahoma; Quanah and Vernon, Texas; Dallas Fort Worth and Menard, Texas, and Memphis, Tennessee, and Birmingham, Alabama, and comprise about 5,154.71 miles of first main track in the following states: Alabama, 132.49 miles; Arkansas, 597.50 miles; Kansas, 629.97 miles; Missouri, 1,713.72 miles; Mississippi, 142.86 miles; Oklahoma, 1,497.56 miles; Tennessee, 18.34 miles and Texas, 422.27 miles.

The Railroad Company also operates 203.46 miles of main line trackage rights in the following states: Missouri, 6.18 miles; Oklahoma, 23.26 miles, and Texas 174.02 miles.

On May 1, 1913, default was made in the payment of the interest then falling due on the \$69,284,000 of the Railroad Company's general lien 5 per cent gold bonds, and on July 1, 1914, default was made in the payment of the interest

which fell due on that date on the \$68,557,000 of refunding mortgage bonds. No interest has been paid on either issue since those defaults, and proceedings have been instituted for the foreclosure of the mortgages securing the two issues. Defaults have also been made in the payment of the principal and interest of the Railroad Company's \$2,250,000 two-year 5 per cent secured gold notes, and \$2,600,000 two-year 6 per cent secured gold notes, and in payment of interest on the Railroad Company's \$28,582,000 of New Orleans, Texas & Mexico Division first mortgage bonds, \$12,153,750 of trust certificates for preferred stock of Chicago & Eastern Illinois Railroad Company, and \$16,944,500 of trust certificates for common stock of Chicago & Eastern Illinois Railroad Company, and on the guaranty by the Railroad Company of the interest payable on \$14,000,000 of New Orleans Terminal Company first mortgage 4 per cent bonds.

It is alleged by petitioners, and sustained by substantial proof, that the difficulties of the Railroad Company were in a large measure due to the failure of the Chicago & Eastern Illinois and New Orleans, Texas & Memphis systems to earn the fixed charges which the Railroad Company had assumed in connection with its acquisition of the interest therein and it is not intended under the plan that the lines of those systems or the property of the New Orleans Terminal Company (which is operated in connection with the New Orleans, Texas & Mexico system) shall be included in the reorganization.

It is alleged in the petition and supported by proof that immediately following the receivership in 1913, a committee was organized to represent holders of refunding mortgage [fol. 454] bonds and the deposit of said bonds was subsequently called for under the terms of an agreement dated June 20, 1914; Speyer & Company immediately following said receivership called for the deposit of the general lien 15-20 year gold bonds under a bondholders' agreement dated May 28, 1913. A committee of defense has also been formed by Office National des Valeurs Mobilières, Paris, to represent French holders of general lien 15-20 year gold bonds, French series, and a large number of said holders have designated L. C. Krauthoff, Esq., as their attorney in fact. That these representatives of bondholders have for a long time been engaged in an examination of the affairs

of the Railroad Company's system, and the relative value and earning capacity of its various lines, with a view to formulating a plan of reorganization which would fairly recognize the rights of the security holders. Much time and attention have been devoted to acquired knowledge as to details, and a careful expert examination of the Railroad Company's operations and physical condition and of its financial requirements has been made by Mr. J. W. Kendrick, an expert of great experience in that line. The plan for the reorganization of the system which is submitted has been formulated as a result of such examination, and it is expected will accomplish, among other things, the following results: (1) Reduction of the fixed charges to a limit believed to be safely within the net earning capacity of the reorganized property; (2) adequate capital provision for present and future requirements; (3) payment or adjustment of all debts, guaranties, etc., and provision for existing equipment trust obligations; and (4) the preservation of the parts of the system deemed advantageous, and such control for the reorganized property as shall safeguard the rights of security holders.

The plan has been adopted by said committee representing refunding mortgage bonds, by Speyer & Company, representing general lien bonds deposited under the agreement of May 28, 1913, and by L. C. Krauthoff, representing the committee of defense and as attorney in fact for French holders of general lien bonds.

It is stated that committees representing the holders of the following securities have approved the provisions of the plan with reference to the treatment of such securities: New Orleans, Texas & Mexico Division first mortgage gold bonds, two-year five per cent secured gold notes, two-year six per cent secured gold notes; St. Louis & San Francisco Railroad Company trust certificates for preferred and common stock of Chicago & Eastern Illinois Railroad Company, and Ozark & Cherokee Central Railroad Company first mortgage five per cent gold bonds.

The plan has also been approved by the committee representing stockholders of the Railroad Company under an agreement dated December 1, 1913.

The proof shows that the Railroad Company owns the entire capital stock of the Kansas City, Fort Scott & Memphis Railway Company and operates the lines of the rail-

road of that company under a lease for ninety-nine years from August 23, 1901. These lines constitute 919.45 miles of first main track, running in general from Kansas City to Memphis, with mileage in the states of Missouri, Arkansas, Kansas, Oklahoma and Tennessee.

The Railroad Company also operates under a lease running for ninety-nine years from December 17, 1903, the lines of railroad of Kansas City, Memphis & Birmingham Railroad Company, the entire capital stock of which is owned by Kansas City, Fort Scott & Memphis Railway Company. These lines include 290.4 miles of first main track running in general from Memphis to Birmingham and Bessemer, in the states of Alabama, Mississippi and Tennessee.

The Railroad Company also owns the entire capital stock of the Birmingham Belt Railroad Company, which operates a belt and terminal system in the city of Birmingham, consisting of about fourteen acres of well-located real estate and 39.1 miles of track serving thirty-four industries.

The Railroad Company also owns the entire capital stock of Kansas City & Memphis Railway & Bridge Company, which owns the bridge over the Mississippi river near Memphis.

The Railroad Company also owns the entire capital stock of the following companies which operates lines of railroad in Texas: Fort Worth & Rio Grande Railway Company, 223.44 miles; Brownwood North & South Railway Company, 17.65 miles; St. Louis, San Francisco & Texas Railway Company, 85.32 miles, and Paris & Great Northern Railway Company, 16.94 miles.

The Railroad Company also owns or has interest in valuable terminals and terminal facilities at St. Louis, Kansas City, Wichita, Memphis, Birmingham, Dallas and other terminal points on the lines of the system.

The plan of reorganization contemplates that all of the lines of railroads and interests hereinbefore described, except [fol. 456] the Chicago & Eastern Illinois Railroad Company, New Orleans, Texas & Mexico system and New Orleans Terminal Company, shall be included in the reorganized system, either by direct ownership or by ownership through securities or by the continuance of existing leases and their transfer to the new company contemplated by

the plan, the bonds of the Kansas City, Fort Scott & Memphis system, however, to remain undisturbed.

The Railroad Company also owns \$6,777,800 of common stock and \$8,102,500 of preferred stock of Chicago & Eastern Illinois Railroad Company, for which the Railroad Company issued its stock trust certificates to the amount of \$12,153,750 for preferred stock and \$16,944,500 for common stock, these certificates bearing guaranteed dividends at the rate of four per cent per annum.

The Railroad Company also owns the entire capital stock of New Orleans, Texas & Mexico Railroad Company, and has issued \$28,128,000 of its New Orleans, Texas & Mexico Division first mortgage gold bonds, secured by a first mortgage on the property of the latter company. In July, 1913, the New Orleans, Texas & Mexico lines were placed in the hands of separate receivers. They have been operated independently of the Railroad Company's system since that date, and are now in the process of a separate reorganization.

As hereinbefore stated, it is not intended under the terms of the present plan and agreement of reorganization that the lines of Chicago & Eastern Illinois Railroad Company or those of New Orleans, Texas & Mexico Railroad Company or the property of New Orleans Terminal Company shall be taken over in any manner by the New Company on the reorganization.

Further details of the plan or reorganization, the old securities outstanding and the proposed new securities to be issued, the exchange of the new securities for the old securities, the reduction of fixed capital charged and various other phases of the plan may be summarized as follows:

#### Capitalization and Fixed Annual Interest Charge or Guarantee

The total capitalization and fixed annual interest charge or guarantee of the present St. Louis & San Francisco Railroad Company, as of June 30, 1915, is shown in the petition of applicants as follows:

\* \* \* \* \*

[fol. 457] "Printed, supra, in full, in application to Missouri Public Service Commission."

## New Securities Proposed to be Authorized and Issued by the New Company

Under the plan and agreement, the New Company proposes to have authorized and to issue or have reserved for issue the following new securities as stated in their petition:

\* \* \* \* \*

“Printed supra, in full, in application to Missouri Public Service Commission.”

### How New Proposed Securities are to be Distributed

The new securities as proposed to be issued by the New Company under the plan and agreement are to be disposed of as follows:

\* \* \* \* \*

“Printed, supra, in full, in application of Missouri Public Service Commission.”

### How New Cash to the Amount of \$25,000,000 is Proposed to be Expended

The plan and agreement proposes to raise the sum of \$25,000,000, which it is estimated will be necessary in connection with carrying out the plan and agreement and which is proposed to be expended as follows:

\* \* \* \* \*

“Printed supra, in full, in application to Missouri Public Service Commission.”

### Fixed and Contingent Charge Obligations of the New Company

The fixed and contingent charge obligations of the New Company as shown by the plan and agreement and stated in the petition are as follows:

\* \* \* \* \*

“Printed, supra, in full in Reorganization Plan and Agreement, and in application to Missouri Public Service Commission.”

## Fixed Charges under the Old Securities Compared with the Fixed Charges under the Proposed New Securities

[fol. 458] Upon the issue of the proposed new securities as hereinbefore stated, the capitalization and interest charges of the New Company are compared with the capitalization and interest charges of the Railroad Company, as follows:

\* \* \* \* \*

“Printed, supra, in full, in application to Missouri Public Service Commission.”

### Reductions in Capitalization and Fixed Charges

It is alleged by petitioners that the plan of reorganization is designed and intended to effect a reduction of the capitalization to an amount well within the value of the property, and such a decrease in the annual fixed interest charges as will be well within the earning capacity of the New Company. The contraction of bonded indebtedness bearing a fixed interest is accomplished by the provisions of the plan that holders of the present refunding mortgage bonds shall accept for approximately twenty-five per cent of their present bonds, and holders of the present general lien bonds shall accept for approximately seventy-five per cent of their present bonds, adjustment and income bonds upon which interest is payable only out of income. It is contended by petitioners that the tables as hereinbefore set forth show that the following reductions will be accomplished by the reorganization.

\* \* \* \* \*

“Printed, supra, in full, in application to Missouri Public Service Commission.”

### Income Account for Four Years Ended June 30, 1915

The petition contains a statement showing the income account for the year ended June 30, 1912, \$12,199,971.44; for the year ended June 30, 1913, \$14,220,029.40; for the year ended June 30, 1914, \$10,210,028.08; for the year ended June 30, 1915, \$11,641,682.63; or an average for the four years ended June 30, 1915, \$12,067,927.88; added thereto for esti-

ated net earnings of Quanah, Acme & Pacific Railway, \$75,000.00; or \$12,142,927.88.

#### IV

##### Fair Value of Property

[2] Determination by the Commission of the fair value of the property involved in a reorganization of a railroad under section 62 of the Public Service Commission law requires that the Commission take into consideration: (1) the original cost of construction, (2) duplication cost, (3) present condition, (4) earning power at reasonable rates, (5) all other relevant matters, (6) any additional sum or sums as shall be actually paid in cash, and (7) the Commission may make due allowance for discount on bonds. On consideration of said section 62, it is apparent that the determination of fair value for the purpose of limiting the securities to be issued on reorganization of a railroad company is a different question from determining present value in a rate case, in at least one respect, that the "earning power at reasonable rates" is to be taken into consideration in the former. There may also be property not used and useful for railroad purposes, which might properly be included in determination of value of property in a reorganization, and excluded in a valuation for rate making.

##### (1) Original cost:

The only evidence before us as to original cost is that presented by applicants' witness, Mr. Alexander Douglas, chief accountant of the receivers of the St. Louis & San Francisco Railroad, who testified that the "book value" of the properties involved in this reorganization located in the states of Missouri, Oklahoma, Kansas and Arkansas, and in the state of Texas north of the Red river, was the sum of \$305,935,958. No details or analysis of original cost of these properties were presented, and we are consequently unable to examine into the "book value" in detail, even if that were possible without having a complete audit by the Commission's accounting force, which would involve much time and a large expenditure of money, but we are aware, and the witness so testified, that since about 1907 the accounts have been required by law to be kept in conformity with

the accounting rules of the Interstate Commerce Commission, which, in the absence of allegations to the contrary, leaves little doubt that additions and betterments in the past eight years have been properly charged.

The evidence before us is to the effect that the original cost of the railroad property involved in this reorganization is in round numbers \$306,000,000.

## (2) Duplication cost:

It appears from the evidence in this case that the cost of reproduction new of "road" and "equipment" to be acquired by the New Company under this proposed reorganization is the sum of \$319,276,000, of which \$54,662,552 is for equipment, as testified by applicants' witness, Mr. F. G. Jonah, chief engineer of the receivers of the St. Louis & San [fol. 460] Francisco Railroad. His valuation appears to be based upon a detailed valuation of approximately half of the track mileage, on which basis, by comparison, the remaining track mileage was estimated, together with a detailed valuation of equipment and terminals. Including terminals and equipment, his valuation amounts to about \$62,000 per mile of line for the 5,166.24 miles involved. This witness recently testified in more detail in case No. 505, "Application of James W. Lusk et al., receivers of the St. Louis & San Francisco Railroad Company, for increases in passenger, baggage and freight rates," as to the value in Missouri, including terminals, which was placed at \$68,527 per roadway mile, by using detailed estimates made in Arkansas, Kansas and Oklahoma, showing in Arkansas \$47,000 per mile and in Oklahoma \$42,000 per mile, the value of the terminals at St. Louis, Kansas City and Springfield in this State being estimated at \$27,591,026.

The Commission has not undertaken the valuation of the property under section 60 of the Public Service Commission law, nor ordered its engineers to make estimates of the cost of reproduction, on account of the time and the large expense involved, and the Commission having no appropriation to cover same, and for the further reason that the railroads of the United States are being valued under the direction of the Interstate Commerce Commission, so there is not before us a complete detailed estimate of the cost of reproduction of the property, but a more general estimate based in part on detailed inventories and appraisals. It

appears sufficient to state that the evidence before us is to the effect that it would cost \$319,300,000 to reproduce the property new, including the estimate of the land. Further, there is some property owned, but not used for railroad purposes, which, from the evidence, amounts to at least \$2,500,000, and which should be added, making a total of \$321,800,000.

### (3) Present condition :

Applicants allege as to the present condition that, "as a result of the improvements already made, the condition and earning capacity of the property has been notably advanced and now compares favorably with the physical condition of neighboring lines," stating, "The plans which have been made for the betterment and improvement of the property have already been pointed out. The receivers have been following these plans so far as possible since their appointment and advise that they have made large expenditures on [fol. 461] account of maintenance of way and maintenance of equipment in order to improve the property generally.

\* \* \* The amount charged to operating expenses for maintenance of way and equipment during the period of receivership compares with previous years as follows:

Yearly average for two years ending June 30,	
1913 (prior to receivership) .....	\$11,242,000
Yearly average for two years ending June 30,	
1915 (during receivership) .....	14,252,000

"The receivers advise that during the years 1913 and 1915 there had been expended in the redemption of equipment, trust obligations and for improvements and additions to property the sum of \$8,155,939.24, which has not been taken into the capital account."

We are aware from our own inspection and reports thereon, that considerable expenditures have been made to improve the conditions of the property in the last two years, and that the property in Missouri generally, with some possible exceptions, is in good condition. Further, this road has considerable of its main line mileage in Missouri protected by block signals.

#### (4) Earning power at reasonable rate:

The average net earnings for the last four fiscal years approximate \$12,142,000 a year. Considering that the operating expenses have been somewhat higher in the past two years, on account of increased expenses for maintenance of way and equipment, and considering also that the properties not included in the reorganization, namely, the Chicago & Eastern Illinois and the New Orleans, Texas & Mexico properties in 1914 had operation ratios, that is, ratio of operating expenses to gross operating income of 84 per cent and 93 per cent, respectively, whereas, the "Frisco" proper, exclusive of the two roads named, had in 1914 an operating ratio of 75 per cent and in 1915 an operating ratio of 69 per cent, we conclude that the normal net earnings at this time could reasonably be taken at \$14,000,000 a year.

Mr. J. W. Kendrick, an engineer, who made a comprehensive report on the system, made estimates of future net earnings increasing from approximately \$13,000,000 in 1915 to approximately \$19,500,000 in 1923. His estimate for the year ending June 30, 1916, was \$13,400,000 net operating income, to which should be added approximately three-quarters of a million of miscellaneous income, making a total of a little over \$14,000,000 for this year. Possibly, the [fol. 462] estimates of Mr. Kendrick should be deferred a year, owing to the conditions resultant upon the present European war; altogether, however, it does not appear unreasonable to assume the total net earnings at \$14,000,000 a year at this time. There appears some uncertainty from the evidence as to whether net earnings should be capitalized at  $4\frac{1}{4}$ ,  $4\frac{1}{2}$  or 5 per cent. The result of capitalizing \$14,000,000 net earnings at each of the percentages named is in round numbers as follows: \$14,000,000 capitalized at  $4\frac{1}{4}$  per cent would give a total capitalization of \$327,000,000; at  $4\frac{1}{2}$  per cent, \$311,000,000, and at 5 per cent, \$280,000,000.

#### (5) Other revelant matters:

[3] It appears that the outstanding stock of the St. Louis & San Francisco Railroad Company, which is in the hands of receivers, is \$50,000,000, and that the par value of its bonds, notes and other evidences of indebtedness out-

standing is \$306,890,056, making the total sum of \$356,890,056. In the total indebtedness, as above stated, are included the \$28,128,000 of bonds issued jointly by the New Orleans, Texas & Mexico system and the St. Louis & San Francisco Railroad Company, on which the latter company is jointly obligated for the full payment of the bonds and interest. The Railroad Company also guaranteed one-half of the payment of \$14,000,000 of New Orleans Terminal mortgage bonds. It also issued and has outstanding \$26,598,250 of trust certificates issued in payment for Chicago & Eastern Illinois preferred and common stock. The total of the last three above-named obligations of the Old Company aggregate \$61,726,250. Under the plan of reorganization, all of these obligations are eliminated. Counsel for some of the protestants contend that these last three named obligations of the Old Company, aggregating \$61,726,250, are not capital obligations.

The term "capitalization" as used in section 62 of the Public Service Commission law is therein defined to include "all stocks and bonds and other evidence of indebtedness."

We think that the obligations of the Old Company to the New Orleans, Texas & Mexico bonds, the New Orleans Terminal mortgage bonds, and its outstanding trust certificates, issued in payment for Chicago & Eastern Illinois preferred and common stock, are capital obligations within the meaning of said section 62. The plan, as hereinbefore stated, contemplates a reduction in capitalization of \$29,678,868, or [fol. 463] 8.31 per cent of the entire capital obligations of the Old Company, making a reduction in the total annual fixed charges (including K. C., Ft. S. & M. system bonds undisturbed) of \$5,728,135, or a reduction of 38.47 per cent; and a reduction in the total annual charges fixed and contingent (including K. C., Ft. S. & M. system bonds undisturbed) of \$1,362,205, or 9.15 per cent.

[4] It appears that no estimate was made, or at any rate presented to us, of intangible value in connection with the appreciation of costs or estimates of cost to aid us in arriving at the value of the property as a going concern. Though the finances of this company may not have been working successfully, yet we believe we should take into account the fact that the property is being successfully operated with an efficient working organization, and also that it has need

of working capital, which latter is expected to be provided from the new money put in.

(6) Due allowance for discount on bonds:

We are not asked by applicants to make due allowance for discount on bonds in this case, as applicants allege that the proposed bonds, stocks, and other evidence of indebtedness do not exceed the fair value of the property and new money, arguing that the fair value of the property is the cost of duplication, \$319,376,000, plus \$2,500,000 for other property and that the cash to be acquired is \$4,500,000 from the receivers, and \$6,800,000 from the stockholders in connection with the sale of \$25,000,000 of prior lien mortgage bonds; that is, a total of \$333,000,000 property and cash against a proposed issue of securities aggregating \$327,211,188. We think that due allowance for discount on bonds should be considered along with all the other elements of value we are required to consider under section 62, *supra*.

(7) Fair value:

The duties of the Commission under the provisions of the Public Service Commission law and other statutes of the State relating to capitalization, reorganizations and mergers of railroad corporations is not merely restrictive, but should also be constructive. The Commission's powers of revision or restriction with those relating to approval or disapproval enable it in many cases, by advice as well as rulings, to bring about an effective reorganization upon bases fair, alike to the public, the companies as corporations and [fol. 464] the holders of securities involved. This constitutes a valuable function of the government which should be exercised when and to the extent it may be practicable. The primary object of section 62 of the Public Service Commission law of this State appears to have been enacted substantially in form, first in the State of New York, and the object of the amendment of the New York statute by adding thereto section 55a, *supra*, was to place the supervision of the issuance of stocks, bonds, notes and other evidence of indebtedness of the reorganization of railroad corporations under the supervision and jurisdiction of the Public Service Commission, and to prevent the over issuance of stocks and bonds by limiting them on reorganization instead of allow-

ing them to exceed the amount heretofore issued by the reorganized corporation. We find that the appellate courts of New York in construing the statutes governing the reorganization of railroad corporations have taken rather a broad and equitable view as to the amount of capitalization to be issued in such reorganizations. The rule seems to have been established by the courts that the amount of new securities generally should not exceed those issued and outstanding by the reorganized company. In the case of *People ex rel. T. A. Ry. Co. v. Pub. Serv. Com.*, 203 N. Y. l. e. 310-312, the court, in discussing a reorganization of a street railway company, said:

"The requirement of the statute is that the issue of the securities shall be necessary for the acquisition of the property, and although as a general rule under this requirement the securities should not be authorized except where the value of the property is equal to the amount of the securities issued, there may be exceptions to that rule. One is found in the statute itself. In the case of the merger or consolidation of two or more corporations it is provided that the capital stock of the corporation formed by the merger shall not exceed the capital stock of the corporations consolidated and any additional sum paid in in cash. Thus, in the case of merger the limit of the amount of stock of a corporation is dependent, not on the value of its property, but on the stock outstanding of the constituent corporations prior to the merger. We think the same rule is applicable to the case of a corporation formed on the reorganization of a foreclosed railroad.

"It is not necessary to consider the issuance of the securities of the new corporation as a refunding of the outstanding obligations of the old. It is sufficient to say that the statute authorizes the bondholders, stockholders and creditors to agree upon a plan for the readjustment of their respective interests and authorizes the new corporation to issue its stock and bonds in accordance with the agreement. A readjustment of the interests of the parties does not contemplate that the new securities shall necessarily be scaled down to the actual value of the property. If this was the contemplation of the statute, the statute would be of little value. The property sold rarely realizes the amount due on the mortgage foreclosed. If the sale

price is considered the criterion of value there could be no plan which would give the holders of stock or of junior securities any interest in the new corporation, while often the bondholders under the mortgage foreclosed might find themselves without the right to obtain any securities of the new corporation in lieu of their bonds. The intent of the statute was to enable the various persons interested in an insolvent or defaulted railroad to agree upon some plan or scheme to take the road out of insolvency and a receivership and make the enterprise a going concern. For this purpose additional money is generally requisite which, as already said, can be obtained only from those interested in the property, and not even from them unless, as an inducement to advance the money, they are given the opportunity of retrieving their prior investment. In many instances the growth of the community in which the railroad was located and the improvement in business conditions has ultimately justified the advance of new capital, and the benefit and protection of the original investors in the enterprise was also the object of the statute. We do not say that in the reorganization of a railroad the new corporation is authorized to issue securities in excess of those of the company to whose property and franchises it has succeeded and the new money that may be put in the enterprise. Such a plan would be plainly inconsistent with the spirit of the Public Service Commissions law against the issue of 'watered' stock or bonds, but, up to the limit we have named, the new corporation has the right to issue securities."

[6] Counsel for some protestants suggested at the hearing and in brief that this Commission would be bound in a rate hearing as to the amounts of capitalization allowed in this reorganization. As heretofore stated, it would be impracticable for this Commission at this time to attempt to make a detailed physical valuation of the properties involved, such as the Interstate Commerce Commission is now making of all the interstate railroads of the United States. It would take from one to two years to make such [fol. 466] a valuation and the expenditure of a large amount of money. This Commission desires to state that in no case has it ever considered that it was bound by the amount of capitalization issued by any public utility in a rate controversy. The decision of the United States Supreme Court,

in the familiar case of *Smyth v. Ames*, held that the market value of the stocks and bonds should be considered as one element in determining fair value. In a rate hearing before this Commission, it would endeavor to ascertain the fair present value of the properties of the reorganized company located within this State and would fix rates thereon, considering capitalization only as one element in reaching that value. It is well known that the assets of a corporation may greatly increase above the capitalization or may greatly decrease below the capitalization, depending upon many conditions of the markets, inventions, discoveries and operating conditions. This statement is made relative to capitalization in rate cases in order that there may be no misunderstanding as to the Commission's position hereafter in any rate hearing.

After giving careful consideration to all the evidence before the Commission, and considering all of the methods of arriving at value as we are required to do under the provisions of said section 62, *supra*, and also all the elements of value, and considering the railroad in operation, we find that the fair value of all of the property involved in this case, taking a broad and equitable view of the provisions of said section 62, *supra*, as applied to reorganization of railroad corporations, including all other property involved not useful for railroad purposes, and together with the sums to be paid in cash as provided for under the plan, having due regard for discount on bonds, to warrant the issuance of capitalization to the amount of \$319,379,420, under the modifications and conditions of the plan and agreement as herein provided.

## V

### Claims of Non-secured Creditors

[7] Honorable Louis Houck and certain other persons appear herein as non-secured creditors, whose claims are not yet established and liquidated, although pending in the courts. Their claims are predicated upon a guarantee of the bonds of the Cape Girardeau & Northern Railway Company by the St. Louis & San Francisco Railroad Company. The validity of the guarantee is disputed by the receivers and the Railroad Company. The amount of the claims is [fol. 467] approximately \$1,500,000. Objected to the pro-

posed plan and agreement of reorganization by these non-secured creditors is predicated on the sole proposition that no provision is made therein for the payment of non-secured claims. The plan as heretofore set forth contains certain provisions relating to the settlement of non-secured creditors. With the view we take of the law of the case, it is unnecessary for us to set out in detail and discuss the adequacy of the provisions made in the plan for the payment of the non-secured creditors.

According to the proof offered by petitioners in this case, the total value of all the assets of the Old Company now being reorganized and to be transferred to the New Company will aggregate about \$333,000,000. Having offered proof of such value for capitalization purposes, under section 62, *supra*, we do not think the New Company can be heard to deny such value when it comes to paying all the honest non-secured creditors of every kind and character, including all claims for overcharges duly established, of the Old Company. This Commission does not look with favor upon any plan of reorganization which seeks to defeat the payment of the honest obligations of the Old Company on fair and equitable terms.

As above stated, the proof in this case shows that there is a large equitable value in the stock of the Old Company which is proposed to be reserved as a stock interest in the New Company for the old shareholders, which will still leave the property of the New Company subject to the claims of non-assenting creditors of the Old Company as announced by the Supreme Court of the United States in the case of *Northern Pacific Ry. Co. v. Boyd*, 228 U. S. 482. In that case the court holds (*l. c.* 502):

"Corporations, insolvent or financially embarrassed, often find it necessary to scale their debts and readjust stock issues with an agreement to conduct the same business with the same property under a reorganization. This may be done in pursuance of a private contract between bondholders and stockholders. And though the corporate property is thereby transferred to a new company having the same shareholders, the transaction would be binding between the parties. But, of course, such a transfer by stockholders from themselves to themselves cannot defeat the claim of non-assenting creditor. As against him the

sale is void in equity regardless of the motive with which [fol. 468] it was made. For if such contract reorganization was consummated in good faith and in ignorance of the existence of the creditor, yet when he appeared and established his debt the subordinate interest of the old stockholders would still be subject to his claim in the hand of the reorganized company. Cf. *San Francisco & N. P. R. R. v. Bee*, 48 California, 398; *Grenell v. Detroit Gas Co.*, 112 Michigan 70. There is no difference in principle if the contract of reorganization, instead of being effectuated by private sale, is consummated by a master's deed under a consent decree."

Again in the same case the court further discusses the rights of non-secured creditors in relation to those of stockholders of the Old Company, l. c. 504:

"And while the agreement contains no provision as to the payment of unsecured creditors, yet the Railway Company purchased insecure claims aggregating \$14,000,000. Whether they were acquired because of their value to avoid litigation, or in recognition of the fact that such claims were superior to the rights of stockholders, does not appear nor is it material. For if purposely or intentionally a single creditor was not paid or provided for in the reorganization, he could assert his superior rights against the subordinate interests of the old stockholders in the property transferred to the new company. They were in the position of insolvent debtors who could not reserve an interest as against creditors, their original contribution to the capital stock was subject to the payment of debts. The property was a trust fund charged primarily with the payment of corporate liabilities. Any device whether by private contract or judicial sale under consent decree whereby stockholders were preferred before the creditor was invalid. Being bound for the debts, the purchase of their property by their new company for their benefit put the stockholders in the position of a mortgagor buying at his own sale."

The court, further discussing the rights of non-assenting non-secured creditors to accept provisions if offered under the plan (l. c. 508), said:

"The fact that at the sale, where there was no competition, the property was bid in at \$61,000,000 does not dis-

prove the truth of that recital, and the shareholders cannot now be heard to claim that this material statement was untrue and that as a fact there was no equity out of which [fol. 469] unsecured creditors could have been paid, although there was a value which authorized the issuance of \$144,000,000 fully paid stock. If the value of the road justified the issuance of stock in exchange for old shares, the creditors were entitled to the benefit of that value, whether it was present or prospective, for dividends or only for purposes of control. In either event, it was a right of property out of which the creditors were entitled to be paid before the stockholders could retain it for any purpose whatever.

"This conclusion does not, as claimed, require the impossible and make it necessary to pay an unsecured creditor in cash as a condition of stockholders retaining an interest in the reorganized company. His interest can be preserved by the issuance, on equitable terms, of income bonds or preferred stock. If he declines a fair offer he is left to protect himself as any other creditor of a judgment debtor, and, having refused to come into a just reorganization, could not thereafter be heard in a court of equity to attack it. If, however, no such tender was made and kept good he retains the right to subject the interest of the old stockholders in the property to the payment of his debt. If their interest is valueless, he gets nothing. If it be valuable, he merely subjects that which the law had originally and continuously made liable for the payment of corporate liabilities."

Bearing in mind that the court held in the *Boyd* case, *supra*, that the plan and agreement entered into between the bondholders, stockholders and creditors for a reorganization of a railroad corporation is a private agreement between such parties, the terms of which may be refused by any non-assenting creditor, and that the establishment of the amount of any disputed creditor's claim is a judicial question for determination by a court of competent jurisdiction, and that any value in the assets of the Old Company which is being transferred to the New Company for the old stockholders is subject to the payment of all non-secured creditors, as declared in the *Boyd* case, *supra*, we think the rights of all non-secured creditors in this reorganization are fully protected under the law as above

stated, and which rights are not for determination by this Commission in a reorganization proceeding.

What we have said with reference to the non-secured creditors represented by Mr. Houck and others applies with equal force to the claim of the Citizens Bank of Union, which is the legal holder and owner of \$5,000 of the St. Louis & San Francisco Railroad Company's two-year six per cent [fol. 470] collaterally secured gold notes of the issue of \$2,600,000, and represented by Joseph T. Davis, Esq., in this proceeding.

## VI

### Objection of Stockholders

Construing the first sentence of section 62 of the Public Service Commission law, providing that reorganizations of railroad companies "shall be subject to the supervision and control of the Commission," as making it our duty to see that the plan of reorganization submitted is not in conflict with the Constitution, laws or public policy of this State, and thus limiting the scope of our authority, two serious objections to the plan are interposed by the protesting stockholders, to-wit: That the provision giving to holders of five per cent income bonds the option to exchange such bonds for an equal par value of six per cent preferred stock, and the provision for the management and control of the new corporation for a period of five years by what is termed a voting trust" are inconsistent with the Constitution and laws of this State, and therefore that the plan to that extent should be disapproved. In the discussion of the objections to the plan much is said in the briefs as to its injustice and inequity to the common stockholders in the two particulars stated. But regarding our jurisdiction, limited as above defined, we consider such matters as within the domain of the private rights of the parties interested, and shall confine our inquiry to the objections made in so far only as the rights of the public are concerned under the Constitution, statutes and public policy of this State.

If the plan of reorganization should be approved by this Commission, it does not clearly appear how it shall be made binding upon and appear in the organization of the New Company. As previously stated, our reorganization statute, section 62, *supra*, was taken from the laws of New

York, and sections 9 and 10 of the stock corporation law of that state, heretofore set out, provide in detail for the reorganization of corporations and for a plan and agreement, fixing the rights of the parties interested, as is sought to be done by the plan and agreement now before us. It is provided in said section 9 that a certificate shall be filed by the parties to the reorganization with the proper state officers setting forth, among other things:

"The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the [fol. 471] classes thereof, whether common or preferred, and the amount of and right pertaining to each class."

And that

"They may insert in such certificate any provisions relating to the new corporation, or its management, contained in any plan or agreement which may have been entered into as provided in section ten of this chapter."

Section 10 prescribes the scope of the plan and agreement for the reorganization and the terms and conditions thereof and contains this language:

"Such plan or agreement must not be inconsistent with the laws of the state, and shall be binding upon the corporation until changed as therein provided, or as otherwise provided by law."

The plan and agreement thus becomes a part of the charter of the New Company and binding upon it accordingly. We have no reorganization law in this State corresponding to said sections 9 and 10 of the New York law. Section 62, *supra*, of our law recognizes that the reorganization plan and agreement may become effective, and we think such plan should be regarded as a part of the articles of association or charter of the proposed New Company, in order to make it binding upon the company and all of the parties who are or may become interested therein.

(1) Convertibility of income bonds:

(8) By the terms of the plan, income mortgage gold bonds not to exceed the total sum of \$75,000,000, at any one time outstanding, are to be issued by the New Company, se-

cured by mortgage on the properties covered by (and subject to) the prior lien mortgage and the adjustment mortgage. The dates, amounts and purposes of the several issues of said bonds are set forth as follows:

"To be issued in partial exchange for existing securities embraced in the plan and for adjustment of outstanding indebtedness; bonds not used or required to be reserved for that purpose to be available for corporate purposes of the New Company.....	\$38,661,200
"Reserved for issue at par after July 1, 1921 at the cumulative rate of \$2,000,000 annually for improvements, betterments and additions and equipment.....	20,000,000
[fol. 472] "Reserved for issue at par after July 1, 1931, at the cumulative rate of \$3,000,000 annually for improvements, betterments and additions and for equipment.....	16,338,800
	<hr/> \$75,000,000

It is also provided in the plan that these bonds "may be made convertible at the option of the holder into preferred stock, (or, if converted during the life of the voting trust, into trust certificates therefor.)"

It thus appears that a portion of these bonds are to be issued presently upon the organization of the New Company and the remainder at later dates, and that all may be made convertible into preferred stock at the option of the holder, and without the consent of the stockholder. And it is shown by the testimony that this option if exercised by the holders of income bonds would result in an increased annual charge against earnings of \$385,000, by reason of the dividend on the preferred stock being one per cent higher than the interest on the bonds. The effect of this added charge is to postpone the right of common stockholders to participate in dividends to the extent of said increase. The plan also provides for future issues of common and preferred stock.

Section 10 of Article XII of the Constitution of this State is as follows:

"No corporation shall issue preferred stock without the consent of all the stockholders."

Section 3065, R. S. Mo. 1909, governing the issue of preferred stock by railroad corporations, provides that:

"Any railroad company organized under the laws of this state may issue a preferred stock for such amount and upon such terms and conditions as the board of directors may prescribe. But before any issue of such preferred stock shall be made, the question of issuing the same, together with the terms, conditions and privileges upon which the same is proposed to be issued, shall be submitted to a vote of the stockholders of said company, at a regular annual election for the directors thereof, or at a special meeting of the stockholders of said company called to consider the same, if at such election all the stockholders shall consent. \* \* \* Said preferred stock shall be offered to all the common stockholders pro rata in proportion to the [fol. 473] amount of common stock held by them. If any common stockholder shall fail to take such preferred stock after thirty days' notice by publication in two daily newspapers in St. Louis, and written notice to clerks of counties holding stock, then any other person may buy said stock."

The plan of reorganization contemplates the incorporation of a New Company under the general corporation laws of this State, and it is well recognized law that where a corporation is thus organized the provisions of the Constitution and statutes applicable thereto enter into and become a part of the charter of the corporation. In 1 Thompson, *supra*, Sec. 172, discussing this subject, it is said:

"And the organization of a corporation under the general laws is an acceptance of the provisions of such laws as a part of the charter of the corporation. In other words, the articles of association or incorporation, taken in connection with the general law under which the corporation has been organized, from what is sometimes termed the 'constitution' of the corporation. These answer the same purpose as the special charter. Articles of association on the one hand may be said to constitute the contract of association between the stockholders, at the same time defining the character and extent of the business in which the corporation shall engage, while on the other hand the general laws constitute the grant from the state to those organizing the corporation, of the franchise or right of or-

ganizing the corporation and accomplishing the purposes agreed upon."

It is also the law that in case of a conflict between the articles of association or by-laws of a corporation organized under the general law and the provisions of the Constitution or statutes of a state, the latter will prevail:

"The rule is well settled that when a corporation is organized under a general law, the law itself limits the powers of the corporation and the nature and extent of the corporate privileges; and the powers, privileges and immunities specified in the legislative act authorizing its organization cannot be added to or enlarged by the charter or other instruments. In all cases here there is conflict between the charter or articles of incorporation and the general law, the latter governs." I Thompson, *supra*, Sec. 174.

In the case of *Durkee vs. People*, 155 Ill. 354, it appears that a by-law was adopted by the incorporators and directors of a railroad corporation purporting to confer voting power upon the holders of bonds as in the case of [fol. 474] holders of stock, and such privilege was endorsed upon the bonds and also upon the certificate of stock. It was provided by the Constitution and statutes of that state that directors and managers of the corporation should be elected by the votes of the stockholders upon the cumulative system and in no other manner. Upon the question as to the voting power of the bonds, the court held as stated in the syllabi:

"A by-law of a railroad company empowering bondholders to vote at stockholders' meetings, and a provision of such bonds giving such right to vote, are void under the constitution and statutory provisions requiring the directors to be stockholders, and elected at the annual meeting of the stockholders by a majority in value of the stock, upon a cumulative system of voting and not otherwise."

"It is a part of the public policy of this State that the corporate business and affairs of railroad companies shall be managed and controlled by directors who are not only stockholders themselves, but are elected by the votes of those who are also stockholders."

There can be no doubt that in conferring upon the bondholders the right to convert bonds into preferred stock without the consent of the holders of common stock the plan of reorganization is inconsistent with the express language of the Constitution and statute above quoted. However, it is urged by counsel for petitioners that all stockholders participating in the reorganization are required to agree thereto by depositing their stock as therein provided, and also to agree to the articles of association by accepting stock in the New Company; and that "prospective stockholders in a corporation about to be organized may agree as they will upon the distribution among themselves of the stock to be issued and may waive rights to preference which the statute may in the absence of express agreement declare in favor of stockholders of existing corporations." The case of *State vs. Swanger*, 190 Mo. 561, is cited in support of this contention. In the *Swanger* case the articles of association provided that one-half of the stock should be common and the other half preferred, and that the voting power should be exclusively in the common stock. Under the section of the Constitution and the statutes providing for the control of corporations by the stockholders, it was contended by the Secretary of State that it was not competent for the incorporators to provide in the articles of association for an issue of preferred stock without voting power. The court held that the provision as to non-[fol. 475] voting preferred stock was but an arrangement between two classes of stockholders that does not concern the public and that "as no rule of common law or public policy is contravened thereby we can perceive no objection to the arrangement, unless it violates some express provision of our organic or statutory law." The court reviewed the law in connection with the provision of the Constitution and statute invoked and held that the articles of association were not in conflict therewith and therefore were not open to the objection lodged against them.

Protestants say that the facts before the court in the *Swanger* case were so different from the facts of this case that the decision of the court therein cannot be considered a precedent in this case. They conceded that the incorporators at the organization of a corporation may legally agree as to the terms of the issue of preferred stock. It is questioned whether such stockholders may waive their rights

under said section 3065 as to future issues of preferred stock and that such waiver would attach to the stock in the hands of subsequent purchasers. But they say the proposed plan goes much further. It authorizes future issues of income bonds and of common stock to which the option feature applies equally as to the original issue of common stock, and it is contended that the stockholder at the organization of the New Company could not waive rights as to such future issues.

Considering the plan as to such future issues of common stock, it appears to us that it is not alone a question of whether the original stockholder may waive his rights under the statute referred to, but rather whether the New Company may be clothed with power to make future issues of bonds and stock containing such terms and conditions. Considering the question in this form, let it be assumed that the articles of association of the New Company provided that the board of directors were authorized to make future issues of preferred stock from time to time, for which income bonds could be exchanged without the vote or option of purchase of the stockholders as required by section 3065. Could it be successfully maintained that such a provision would be upheld as against the holders of future issues of common stock? If so, then the statute would have little force except in the absence of a contrary provision in the charter. We think the statute cannot be so restricted in its effect, and that such a provision would be against the public policy of this State, as indicated by the section of the Constitution and statute upon that subject.

[fol. 476] (9) Another objection to the option feature of the plan, to which attention is called, is the possibility of the control and management of the company being placed in the hands of the bondholders. Under section 6 of Article XII of the Constitution of this State and sections 2967, 2969, 2973, 3054 and 3056, R. S. Mo. 1909, the stockholders of the corporation voting under the cumulative system are given the sole power in the selection of the directors or managers of the corporation, and the right to control the affairs of the company is thus lodged in the stockholders. In some jurisdictions the voting power is not thus confined to the stockholders, but may also be given to holders of bonds. A consideration of the foregoing provisions of our

Constitution and statutes makes it clear that it is the policy of this State that the stockholders who own the equity in the corporation, and not the bondholders who are interested only to the extent of their claim, shall have the control and management of the corporation.

Under the option feature considered the holders of income bonds in the event the company was not prosperous would doubtless continue to own their bonds and be content to receive the interest thereon. On the other hand, if the business of the company should become prosperous and the income be sufficiently increased, the holder of such bonds could of his own volition transfer himself from the position of creditor to that of stockholder with power to participate in the control of the company. And considering the amount of such income bonds authorized by the plan, it is not improbable that the exercise of such option should result in wresting from the former stockholders the future control of the company. In the case of *Wall vs. Utah Copper Co.*, 70 N. J. Equity Reports, 17, it is shown by the facts that the defendant company entered into a contract with the Guggenheim Exploration Company, the substance of which is stated in the opinion as follows:

"The result of this agreement, so far, if carried out, would be to give the exploration company the right, by virtue of its ownership of \$3,000,000 of convertible bonds, to acquire \$1,500,000 of new stock of the company, which would thereby be increased to \$6,000,000, and by the delivery to it of one hundred and fifty-six thousand shares of present existing stock to make it the owner of \$3,600,000, which will be a majority of the whole issue of \$6,000,000."

A dissenting stockholder was complainant in that case and asked for an injunction against the enforcement of such contract. It appears in the course of the opinion that [fol. 477] the law of that state does not materially differ from the law in this State upon the subject discussed. Discussing the option sought to be given to the bondholder by the terms of the contract, and distinguishing the case from other cases considered, the court said:

"In the present case there is no purchase of property, no appraisalment of value by disinterested parties; but a simple, clear contract to give a third party the absolute

right, by way of option, to purchase stock of a corporation, at a price now fixed, if at a future day that party should feel it his interest to make the purchase. I think that not only is in direct violation of the complainant's individual right as a stockholder, even if it were an issue of stock in *præsenti* for a fixed price, but that the optional character of the contract is vicious in itself, and not warranted by that clause in the statute which authorizes the creation and issue of new stock."

Thus far, we have considered the case only as to stockholders agreeing to the option conferred upon the holders of income bonds and waiving their statutory rights as to the issue of preferred stock. But the case presented to us is quite different from that in which all the stockholders were assenting to such option. The holders of common stock in a substantial amount are before this Commission asserting rights under the law which they unquestionably possess as stockholders in the present company, but of which they will be deprived under the proposed plan if adopted. The purpose of the reorganization of a corporation is that the old company may be refinanced and placed upon its feet, or a new company organized, in order to preserve the rights of those interested in the old company. If a new company is to be organized the rights of the stockholders in the old company should not be lightly considered. In view of these facts and of the constitutional and statutory provisions, upon which the protesting stockholders base their contention, the question is presented whether this Commission is warranted in approving a plan by which the stockholder would be given the alternative of losing his investment by refusing to enter the New Company, or of surrendering the stock he now holds, together with the legal rights and privileges attaching thereto, and accepting stock in lieu thereof in which such rights are waived by his agreement and assent. We think not. It may be that he will lose his investment, if the plan should fail, but that is a legal question to be dealt with by the courts.

Whether we look only to the stockholders as voluntarily agreeing to the plan and taking stock in the New Company, [fol. 478] or to the holders of stock now before us objecting to being coerced into such plan, our conclusion is that the option given to the holders of income bonds to convert them

into preferred stock without the consent of the holders of common stock is inconsistent with the law and public policy of this State.

## (2) Voting trust:

The provision of the plan termed the "voting trust," under which it is proposed that the stock of the New Company shall be held and voted by trustees named therein for a period of five years, is as follows.

"The preferred and common stock of the New Company (except such number of shares as may be disposed of to qualify directors) shall be vested in the following voting trustees: Frederic W. Allen, George W. Davison, Seward Prosser, Charles H. Sabin, James Speyer, Frederick Strauss and Festus J. Wade.

"In the event of the death or failure or refusal to serve of any person designated as a voting trustee prior to the creation of the voting trust, the vacancy shall be filled by the reorganization managers. The stock shall be held by the voting trustees, and their successors, jointly (under a trust agreement prescribing their powers and duties and the method of filling vacancies), for five years, although the voting trustees may, in their discretion, deliver the stock at an earlier date. Until delivery of stock is made by the voting trustees they shall issue certificates of beneficial interest entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, on payment of any taxes in connection with the surrender of voting trust certificates and the transfer and delivery of stock certificates, and in the meanwhile to receive payments equal to the dividends collected by the voting trustees upon the number of shares therein stated, which shares, however, with the unrestricted voting power thereon, shall be vested in the voting trustees until the stock shall be delivered, as provided in the trust agreement and in the voting trust certificates issued thereunder."

The reasons for making this scheme a part of the plan were stated by Mr. Frederick Strauss of the firm of J. & W. Seligman & Company, a witness for petitioners, as follows:

“Q. What special reasons were there for a desire on the part of the present bondholders to place the stock in a voting trust?

[fol. 479] “A. The refunding bondholders and general lien bondholders, both, naturally felt that they should have a voice in the management of the property when they were asked to make sacrifices for the benefit of the stock and for the benefit of the property generally. The refunding 4s had the biggest part of the total bond issue of eighty-five million dollars. They took instead only three quarters of the principal in a new four per cent bond, the rest being taken as a contingent charge, and the issue of which they were asked to have a part is now raised to \$250,000,000. They felt as they were enlarging the amount of the mortgage and providing for the future capital of this road, that they were making a sacrifice of a fixed interest bearing obligation, in part at least, for a contingent one, and that they should have a voice in the property. The same thing applies with even greater force to the general liens because they were still taking a greater part of their principal in contingencies, contingent charges, so we thought the fairest way to do would be to take two representatives from each of the three important classes of securities, the two bonds and the stock and apportion that stock representation partly east and partly west as the stock is held partly in the east and partly in the west, and then appoint a seventh man in the manner I have just described.”

“It was thought that Mr. Allen (seventh member) would represent in an admirable manner the eastern part of his own firm and eastern investors on the one hand and in a measure also the west.”

It appears from the foregoing that four of the seven trustees named are selected to represent bondholders, two to represent the stockholders, and the other, as testified to by Mr. Strauss, “would be regarded as a sort of neutral.” It follows that as the bondholders name a majority of the voting trustees, the control of the New Company is to be placed in their hands for a period of five years, unless, in the discretion of the trustees, they shall terminate the trust at an earlier date. Mr. Strauss divided the voting trustees into four classes—two representing each of the two kinds of bonds, two the stockholders and one neutral.

There can be little doubt, however, that in the management of the company the natural alignment would be according to interest—the representatives of the bondholders, or creditors, on one side, and of the stockholders, the owners of the property, on the other.

A voting trust is not a new device for the control of a re-organized corporation. Such schemes have been adopted [fol. 480] in many cases and the validity of such a plan of management under varied forms and provisions has frequently been passed upon by the courts. The subject is also much discussed and the decisions reviewed in the text-books, but the authorities are not harmonious and no general rule can be deduced therefrom. See 1 Thompson on Corporations, 2 Ed., Secs. 889, 903; 3 Clark & Marshall on private corporations, Sec. 657, and cases cited.

Many nice distinctions are made in some of the cases as to the conditions under which a voting trust will be upheld and those under which it will be declared invalid as against public policy. Being a nonjudicial body, we shall not attempt to apply those distinctions to the trust now under review. One of the leading cases against the validity of a voting trust is the Shepaug Voting Trust Cases, 60 Conn. 553. The following quotation from that case is taken from 3 Clark & Marshall, *supra*, Sec. 657:

"It is the policy of our law that an untrammelled power to vote shall be incident to the ownership of the stock, and a contract by which the real owner's power is hampered by a provision therein that he shall vote just as somebody else dictates, is objectionable. I think it against the policy of our law for a stockholder to contract that his stock shall be voted just as some one who has no beneficial interest or title in or to the stock directs; saving to himself simply the title, the right to dividends, and perhaps the right to cast the vote directed, willing or unwilling, whether it be for his interest, for the interest of other stockholders, or for the interest of the corporation, or otherwise. This I conceive to be against the policy of the law, whether the power so to vote be for five years or for all time. It is the policy of our law that ownership of stock shall control the property and the management of the corporation, and this cannot be accomplished and this good policy is defeated if stockholders are permitted to surrender all their discre-

tion and will, in the important matter of voting, and suffer themselves to be mere passive instruments in the hands of some agent who has no interest in the stock, equitable or legal, and no interest in the general prosperity of the corporation. And this is not entirely for the protection of the stockholder himself, but to compel a compliance with the duty which each stockholder owes his fellow stockholder, to so use such power and means as the law and his ownership of stock give him, that the general interest of stockholders shall be protected and the general welfare of the corporation sustained, and its business conducted by its [fol. 481] agents, managers and officers, so far as may be, upon prudent and honest business principles, and with just as little temptation to and opportunity for fraud, and the seeking of individual gains at the sacrifice of the general welfare as is possible. This I take it is the duty that one stockholder in a corporation owes to his fellow stockholder; and he cannot be allowed to disburden himself of it in this way. He may shirk it perhaps by refusing to attend stockholders' meetings, or by declining to vote when called upon, but the law will not allow him to strip himself of the power to perform his duty. To this extent, at least, a stockholder stands in a fiduciary relation to his fellow stockholders. For these reasons I hold that this trust agreement is void as against the policy of the law of this state."

Other cases are cited and quoted from the same author setting forth the opposite view:

Section 6 of Article XII of the Constitution of this State is as follows:

"In all elections for directors or managers of any incorporated company, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates, and such directors or managers shall not be elected in any other manner."

Section 2973, R. S. Mo. 1909, is almost identical in its provisions with said section 6 of the Constitution. No case decided by an appellate court of this State has been called to our attention in which said section of the Constitution and statute were construed authoritatively as to the validity of a voting trust. In the case of *Barrie vs. United Railways Co.*, 138 Mo. App. 557, it is shown by the facts stated that the management and control of the defendant company was conferred by the stockholders upon a voting trust, in many respects similar to that now before us, and the court strongly disapproved of such a scheme of corporate control. As stated in the opinion, the validity of the trust was not in judgment, and the views of the court were expressed thereon only, lest by silence an inference of approval should be drawn. The court said (l. c. 665):

[fol. 482] "It is possibly true that new stockholders came in after 1904, but that cannot affect the matter, for under the tripartite agreement and the voting trust, no matter how many new stockholders came into the corporation, the control and management of its affairs was to be kept, or is provided to be kept, for a period of five years, in the voting trust, the majority of whom were the same gentlemen who had charge of the property from the inception of the consolidation of the street railway lines. We do not mean to be understood here as recognizing this voting trust as a lawful arrangement under the laws of this State. Nor are we here deciding that it is invalid. Such an arrangement is recognized under the laws of the State of New York, these voting trusts being limited to a term of five years, but New York has not the same provisions that the State of Missouri has in her laws. Our laws, as well as our Constitution, provide that the business and affairs of corporations shall be managed by a board of directors, all of whom shall be elected annually, for a term of one year, with the provision, however, that a corporation may provide by its by-laws or articles of association for a division of its board into three classes, and the subsequent annual election of one-third of the number thereafter for a period of three years. That is to say, the longest term under our corporate law the same persons elected can remain in office as directors under one election, is for a period of three years, even then one-third of their number must be elected every

year. In effect this is a legislative and possibly a constitutional construction, or inhibition against the holding over, under one election of a director for a longer period than three years. The object of this is manifest. Its purpose is to guard against holding in a few hands in perpetuity the business and management of a corporation and to give all stockholders an opportunity, at least every year, to be heard by their voices and votes in the election of those who are to manage its affairs. So far do our Constitution and our laws carry this, that we have in this State the right of cumulative voting, by which the stockholder can multiply his vote by the number of directors to be elected annually. The stockholders in these two corporations have seen fit, however, to continue the affairs of their companies, at least of the United Railways, under the same management for a period of five years; that management is composed, in its controlling numbers and membership, of the very same gentlemen who have had the financial control of these two corporations ever since 1899 at least. We ex-[fol. 483] press our views on this voting trust here in passing, as we are bound to refer to it, lest by silence we shall be held to have sanctioned it."

Though what is said in the *Barrie* case is merely obiter, and so stated, it is evidence that the court gave the matter careful consideration, and as it is the only pronouncement of an appellate court of this State upon that question, it is persuasive authority with this Commission when applied to the facts of this case. It seems clear to us that the intention and purpose of said section 6 of the Constitution and the corresponding section of the statutes was to place the election of the directors of corporations and therefore the management and control thereof, in the hands of the shareholders. The right given to the shareholder to vote by proxy is merely a convenience and implies that when the vote is thus cast it is in accord with the interests and view of the shareholder equally as if cast by him in person. As shown by the testimony and the plan under consideration, four of the seven voting trustees represent the bondholders of the corporation, and but two, the stockholders and these trustees as individuals, select the board of directors. The trustees are not required to consult the shareholders, but are authorized to act independently of them, and may act

in opposition to the wishes and direction of the shareholders, if so disposed.

In the recent case of *Venner vs. Chicago City Ry. Co.*, 258 Ill. 523, the court recognizes the rule that a voting trust agreement is invalid which provides that (1. c. 541) "the stock of the corporation is to be voted or its affairs managed by the determination of persons other than its stockholders or by a minority of its own stockholders," and citing many authorities in support thereof. Under these facts and conditions we think it cannot fairly be said that the board of directors thus selected were elected by the shareholders of the corporation within the meaning of our Constitution and statutes. It is said that "the Constitution, statutes and decisions of the various jurisdictions are the principal sources of information" (10 Enc. of Ev., 450) as to the public policy of a state, and after considering the provisions of our Constitution and statute and the decision of the court of appeals cited, it is our conclusion that the voting trust provided for in the plan of reorganization is against the public policy of this State.

[fol. 484] (3) Allotment of common stock:

A third objection by the stockholders is that if they accept the plan they are to receive in the New Company only 85 per cent of the stock they now hold in the present company. This question involves matters of private agreement between the interested parties, which, as herefore held, this Commission is without authority to decide.

(4) Reorganization expenses:

(10) Vigorous objections were made by some of the protesting stockholders as to certain proposed organization expenses. The petition contains the following blanket items of proposed reorganization expenses:

"Improvements and betterments, additions, acquisitions including equipment, court costs and other legal expenses, including compensation and disbursements of trustees of existing mortgages; reorganization managers' compensation; syndicate commissions; engraving of new securities; accountant and other expert fees and expenses; charges for listing securities on various stock exchanges;

compensation and disbursements of committees and others representing existing securities, including depositaries; organization, franchise and other taxes, including stamps and other organization and miscellaneous expenses; contingencies, etc.; balance to New Company as additional working capital, \$6,833,631."

In re Investigation of St. Louis & San Francisco Railroad Receivership, 29 I. C. C. 139, l. c. 153, the Interstate Commerce Commission severely criticised the former financial policy and management of said railroad company for the payment of "extravagant rates of discount, including the payment of premiums on retired issues and commissions to banks and bankers on such issues."

Section 57 of the Public Service Commission law of this state makes it incumbent on this Commission to find as a fact and state in its order authorizing the issuance of stock, bonds, notes and other evidences of indebtedness, "the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order." Such has been the construction placed upon a similar statute in New York. *People ex rel. Delaware & Hudson Co. vs. Stevens*, 197 N. Y., l. c. 9; *People ex rel. [fol. 485] Binghampton Light, Heat & P. Co. vs. Stevens*, 203 N. Y. 7; *People ex rel. T. A. Ry. Co. vs. Public Serv. Com.*, 203 N. Y. l. c. 310, and *People ex rel. W. S. R. R. Co. vs. Public Serv. Com.*, 210 N. Y. 456.

Witness Frederick Strauss, representing J. & W. Seligman & Company, one of the reorganizers, testifying in this case, could not enumerate the amounts for the specific items for which the said expenditure of \$6,833,631 was to be made, or for the several various reorganization expenses enumerated in the petition. Witness James Speyer, representing Speyer & Company, one of the reorganizers, when testifying in this case corroborated the testimony of Mr. Strauss in regard to such indefinite proposed expenditures.

The testimony is undisputed that at this time it cannot be known as to the several amounts provided for reorganization expenses. While this Commission feels that reason-

able and just expenses for counsel and reorganization managers and other various necessary expenses in connection with a reorganization of this magnitude should be paid, yet it will not approve of extravagant or wasteful expenditures in connection with such reorganization. While the Commission will authorize the blanket expenditure as provided in the petition not to exceed the sum of \$6,833,631, yet it will attach to the order authorizing such expenditure, and will require that a properly itemized statement for each proposed expenditure shall be submitted to the Commission by the New Company, with a certificate of one of its officers, duly verified, that such expenditure is reasonable and just, and the Commission will then determine the specific amount to be allowed therefor, and authorize the issuance of such securities for that specific item by supplemental order. In this way the stockholders and the public will be fully protected by preventing either needless or extravagant expenditures in the reorganization of this great property. The evidence at this time is not sufficient for the Commission to pass upon each specific item of proposed expenditure and the matter will be handled in the final order to be issued by this Commission authorizing the new corporation to make the expenditures of said \$6,833,631, as herein provided.

## VII

### Stock and Bond Bonuses Disallowed

[11] Certain questions are involved in the plan as presented relating to the payment of bonuses on the exchange [fol. 486] of certain bonds of the Old Company and the first and second preferred stock of the Old Company for bonds and common stock of the New Company.

As heretofore stated, section 57 of the Public Service Commission law of this state makes it incumbent on the Commission to state in this order authorizing the issuance of stocks or bonds "the purposes to which the issue, or proceeds thereof, are to be applied."

## (1) Bond bonuses:

The plan provides for the exchange of the \$69,384,000 of the five per cent general lien bonds, which are now outstanding in the hands of the public for securities to be issued by the New Company, namely, \$17,346,000 of the four per cent prior lien bonds, \$19,658,568 of the six per cent cumulative adjustment bonds, and \$38,161,200 of the five per cent income bonds, making the total securities of \$75,165,768 to be given in exchange for the said \$69,384,000 of the four per cent general lien bonds of the old company. This makes a bonus of \$5,781,768, or an increase of that amount of new securities over old securities for which the exchange is proposed to be made. The Commission does not find the fair value of the property as set out elsewhere in this report to warrant the issuance of any additional amount of bonds to be given in exchange as a bonus as provided by the plan as herein stated. The Commission will only authorize the issuance of \$17,346,000 of the four per cent prior lien bonds, \$17,346,000 of the six per cent cumulative adjustment bonds, and \$34,692,000 of the five per cent income bonds, making the total of \$69,384,000 of new securities which may be given in exchange, at par, for the \$69,384,000 of general lien bonds of the Old Company.

## (2) Stock bonuses:

The testimony shows that the St. Louis and San Francisco Railroad Company has \$5,000,000 of first preferred stock, \$16,000,000 of second preferred stock and \$29,000,000 of common stock, all of which has been authorized and (except \$14,237.70) has been issued and is now outstanding in the hands of the public. The plan provides that the common stock of the Old Company of \$29,000,000 shall be exchanged for common stock of the New Company on the basis of \$85 of new stock for \$100 of the stock; that said \$5,000,000 of first preferred stock of the Old Company shall be exchanged for common stock of the New Company on the [fol. 487] basis of \$125 of new stock for \$100 of said first preferred stock, which would make a bonus of \$1,250,000 to the holders of the first preferred stock in the Old Company; that said \$16,000,000 of second preferred stock of the Old Company shall be exchanged for common stock of the New Company on the basis of \$105 of new stock for \$100

of said second preferred stock, which would make a bonus of \$800,000 to the second preferred stockholders in the Old Company, and a total bonus to the first and second preferred stockholders in the Old Company of \$2,050,000. The Commission does not find that the fair value of the property as set out elsewhere in this report warrants the issuance of any amount of stock to be given in exchange as provided in the plan as bonuses to the first and second preferred stockholders of the Old Company. The Commission will authorize the issuance of \$5,000,000 of common stock of the New Company to be given in exchange to the holders of the \$5,000,000 of first preferred stock of the Old Company, and the issuance of \$16,000,000 of common stock of the New Company to be given in exchange to the holders of the \$16,000,000 of second preferred stock of the Old Company, and \$24,650,000 of common stock in the New Company to be given in exchange for the \$29,000,000 of common stock of the Old Company, making the total amount of common stock of the New Company to be issued in exchange for the stock of the Old Company of \$45,650,000.

## VIII

### In Conclusion

It is shown by the testimony that the plan and agreement under consideration is the result of much labor on the part of those who have been promoting it, and of concessions and compromises on the part of the many conflicting interests dealt with. It is also shown and admitted by the protesting shareholders that the plan has many commendable features which should be included in any plan for the reorganization of this company. It clears the properties of the several underlying and overlapping mortgages which prevent the securing of new capital for necessary extensions, additions and betterments, and in lieu thereof provides for one general prior lien mortgage covering all of the properties and under which bonds may be issued from time to time to provide adequate capital for needed future requirements.

The plan, as hereinbefore stated, contemplates a reduction in capitalization of \$29,678,868, or 8.31 per cent of the entire capital obligations of the Old Company, making a

[fol. 488] reduction in the total annual fixed charges (including K. C., Ft. S. & M. system bonds undisturbed) of \$5,728,135, or a reduction of 38.47 per cent; and a reduction in the total annual charges, fixed and contingent (including K. C., Ft. S. & M. system bonds undisturbed) of \$1,362,205, or 9.15 per cent. The disallowance of the total sum of \$7,831,768 for stock and bond bonuses as hereinbefore stated, still further reduces the total capitalization of the New Company under that of the Old Company the sum of \$37,510,636. This will also make a substantial change in the percentages as above set forth.

Although it requires the shareholders to put into the New Company \$25,000,000 in cash, it also provides that for all of said sum the shareholders will receive an equivalent amount in prior lien mortgage bonds. And if the shareholders should be unable to raise the necessary amount of cash to pay his assessment and take his allotment of bonds, a loan syndicate is provided which will loan him the money on the security of his stock and bonds. On account of the many commendable provisions, it is with reluctance that we have felt constrained to hold that the plan is in conflict with our Constitution and statutory law, as construed by our court in the two particulars heretofore considered, namely, the convertibility of income bonds into preferred stock, and the voting trust agreement. The provision for the convertibility of income bonds was not included in the plan as first drafted and partially agreed to. As to the voting trust provision, it is sufficient to add to what has already been said, that this railroad system and its affairs have been managed and controlled for over two years through a receivership in the Federal Court. The testimony shows that under the receivership, notwithstanding the adverse business conditions through which railroads throughout the country have passed during that period, the company has been effectually and economically managed with a view of conserving the rights of all parties interested, stockholders as well as creditors. If the receivership should be wound up and the control and management of this road should pass to the New Company under the plan proposed, its control and management for the next five years would pass to the bondholders and creditors, and the shareholders, notwithstanding the fact that they are required to contribute all the new cash neces-

sary to put the company again upon its feet, would have no authoritative voice or effective control of the company's affairs. As we view our Constitution and statutes governing the management and control of railroad companies they [fol. 489] are inconsistent and irreconcilable with the scheme of the plan in that regard. A preliminary order should be entered in conformity with the views herein expressed. All concur.

### Preliminary Order

The petition of J. & W. Seligman and Company, and Speyer and Company, as reorganization managers, for the reorganization of the St. Louis & San Francisco Railroad Company, and for an order authorizing the issue of stocks and bonds, and containing the proposed plan and agreement of reorganization of said railroad company, having been filed with this Commission requesting a preliminary order of approval of said plan and agreement of reorganization, as provided by the provisions of section 62 of the Public Service Commission law, and the Commission having heard proof and argument in explanation of and in support of the issuance of such preliminary order of approval of said proposed plan and agreement of reorganization of said St. Louis and San Francisco Railroad Company, and protesting nonsecured creditors and stockholders in opposition thereto, and the Commission having on the date hereof made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, now, upon due consideration of the proposed plan and agreement of reorganization as presented and discussed, the views of this Commission in respect thereto are now expressed in this preliminary order of approval, as follows:

Ordered: 1. That this Commission will approve said proposed plan and agreement of reorganization of the St. Louis and San Francisco Railroad Company when it is hereafter duly presented to this Commission by the New Company, which is to be hereafter organized under the laws of this State, as provided therein, for the purpose of purchasing and operating the properties now belonging to said St. Louis & San Francisco Railroad Company, provided

said plan and agreement is modified to conform to the requirements and provisions set forth in the report of this Commission containing its findings of fact and conclusions thereon and referred to and made a part hereof.

Ordered: 2. That the Commission reserves its full right and authority to approve the prior lien mortgage, cumulative adjustment mortgage, and income mortgage to be hereafter issued by said New Company, as provided in said plan, as to form and substance thereof, when hereafter submitted to the Commission, before their final execution and delivery.

[fol. 490] Ordered: 3. That applicants, interveners, and any other parties interested therein, be, and they are hereby, given leave to file with this Commission a motion for a rehearing within ten (10) days after receipt of a certified copy of this order and the report filed herein.

Ordered: 4. That the Commission reserves jurisdiction of the subject matter and of the parties, for the purpose of entering such additional or supplemental order or orders herein as the facts may from time to time warrant, and that this case be continued for such further action.

Ordered: 5. That the Secretary of the Commission forthwith serve on each of said applicants and interveners a certified copy of this order and the report filed herein.

#### Supplemental Order No. 1

Now, at this time, come the applicants herein, J. & W. Seligman and Company, and Speyer and Company, and pray the Commission to extend the time for filing motion for rehearing, as fixed in the preliminary order entered herein on the 22nd day of December, 1915, until and including the 15th day of January, 1916. Now, upon due consideration, it is

Ordered: 1. That the applicants, interveners and any other parties interested herein, be, and they are hereby, given leave to file with the Commission a motion for rehearing on or before the 15th day of January, 1916.

Ordered: 2. That this order shall take effect on this date, December 31, 1915.

### Supplemental Report of the Commission

ATKINSON, Chairman, and KENNISH, Commissioner:

#### I

#### Statement

On January 21, 1916, petitioners J. & W. Seligman & Company and Speyer & Company, as reorganization managers, filed their joint motion for a rehearing and for modification herein.

The Commission at the request of certain objectors granted leave to them to file suggestions on or before February 21, 1916, in opposition to said motion for rehearing and for modification.

[fol. 491] On February 18, 1916, Chas. H. Sabin, Frederick Bull, Stacy C. Richmond, Eugene V. R. Thayer, H. S. Priest, Samuel W. Fordyce, Albert T. Perkins and Festus J. Wade, as stockholders, filed certain suggestions for a modification of the original report and order entered herein; and also submitted a voting trust in blank form for consideration, and which if approved by the Commission and adopted by said reorganizers would meet with the approval of said stockholders.

On January 10, 1916, a protest by the Corporation Commission of the State of Oklahoma was filed with this Commission.

On January 24, 1916, the Railroad Commission of the State of Arkansas notified this Commission that if a rehearing was granted it desired to be represented at such rehearing.

On February 10, 1916, the Cape Girardeau Pressed Brick Company, an alleged unsecured creditor against said St. Louis & San Francisco Railroad Company to the amount of \$8,000, by its attorneys, Oliver and Oliver, entered its appearance as an interested party in said reorganization.

Under date of February 17, 1916, formal notice of withdrawal by J. & W. Seligman & Company and Speyer & Com-

pany of their application for a rehearing and for modification of the order of the Commission was filed with this Commission. It was stated in the letter accompanying said formal notice of withdrawal that it was the intention of said reorganizers to bring out a modified plan or reorganization which it was hoped would be considered by the Commission to conform to its former report and order. Up to this date no proposed modified plan has been received by the Commission from said reorganizers or any further explanation in relation thereto.

We shall proceed to treat the proposed modifications submitted by Mr. Wade and other stockholders in the nature of a motion to modify the original report and order entered herein, and will consider all briefs and suggestions of counsel representing the various objectors as applying to such proposed plan of reorganization so submitted by said stockholders.

## II

### Accrued Interest Allowed

I has been called to the attention of the Commission that, by inadvertence in its original report, it erred in disapproval [fol. 492] ing the plan in so far as it provides for the payment to holders of present general lien five per cent gold bonds of \$33.33 in adjustment mortgage bonds of the New Company for each \$1,000 general lien bond in adjustment of unpaid interest on said general lien bonds at five per cent from November 1, 1914, to July 1, 1915. Such payment is in no sense a bonus, but is a payment in securities at par of accrued interest of a secured debt of the present St. Louis & San Francisco Railroad Company. The Commission is advised through the reorganization managers that the receivers of the Railroad Company will have in cash to be turned over to the New Company as of March 1, 1916, more than \$2,500,000 which will be added to the assets of the New Company and as a proper capitalization of the New Company. This amount will more than pay the accrued interest as above stated. The former report and order should be so modified as to allow the above accrued interest as herein stated.

### III

#### Interest of Income Mortgage Bonds

[12] It is suggested by said stockholders that the plan be further modified by allowing the general lien bondholders to receive fifty per cent of their holdings in six per cent income mortgage bonds instead of fifty-five per cent in five per cent income mortgage bonds. In other words, it is suggested that in view of the formal order of the Commission disallowing the extra five per cent in income mortgage bonds as a bonus that the rate of interest of said bonds should be increased from five per cent to six per cent. By increasing the rate of interest from five per cent to six per cent, it will make quite a material increase in the contingent charges against the New Company. As shown in our original report, we do not think from the estimated income of the New Company that even the contingent charges should be increased above what we determined therein. To allow an increase in the rate of interest from five per cent to six per cent on the ground of the disallowance of a five per cent to six per cent on the ground of the disallowance of a five per cent bonus does not meet with the approval of the Commission, and for that reason the plan should not be modified by increasing the rate of interest of the income mortgage bonds from five per cent to six per cent.

### IV

#### Voting Trust

[13] The serious objection to the voting trust feature of the original plan of reorganization was that it placed the [fol. 493] selection of the voting trustees, and consequently the election of the board of directors and the management and control of the company, in the hands of the bondholders instead of the stockholders, as provided by the Constitution and laws of this State. The modified plan now considered proposes the substitution of two new names of voting trustees in lieu of two named in the original plan, but makes no change whatever as to the method of the selection of the trustees. It is apparent that a change of trustees does

not relieve the voting trust of the objectionable feature to which attention was called in the former opinion. The Commission did not object to the personnel of the trustees first named, but rather to their selection by the bondholders, and as to that feature no change has been made in the plan as modified.

A brief examination of some of the more important provisions relating to the powers of the voting trustees as set forth in said proposed voting trust agreement as submitted by said stockholders may be of interest, and we here quote same as follows:

“Second. On the — day of —, 19—, or whenever, earlier, the voting trustees shall decide to make such delivery, the voting trustees in exchange for, and upon surrender of, any stock trust certificates then outstanding, will, in accordance with the terms thereof, and on payment, if the voting trustee shall so require, of a sum sufficient to reimburse them for any stamp tax or other governmental charge in connection with such delivery, deliver at their office or agency in the Borough of Manhattan, in the City of New York, certificates of stock of the — Railroad Company, and may require the holders of stock trust certificates to exchange them for certificates of capital stock. Whenever, pursuant to the foregoing provisions of this article, certificates of capital stock of the — Railroad Company shall become deliverable, or at any time thereafter, the voting trustees may deposit with — Trust Company of New York, or other trust company in good standing having an office in the Borough of Manhattan, in the City of New York, stock certificates, duly endorsed in blank or accompanied by proper instruments of assignment and transfer in blank, duly executed to a par amount, of each class of stock, equal to the amount of stock called for by the outstanding stock trust certificates for such class of stock, with authority to such depository to make delivery thereof in exchange for stock trust certificates, and thereupon all further obligation or duty of the voting trustees under this agreement shall terminate.

[fol. 494] “Third. Any voting trustee may, at any time, resign by delivering to the other voting trustees at the office of the agent of the voting trustees for the transfer

of stock trust certificates, in writing, his resignation, to take effect ten days thereafter, or on its earlier acceptance by the voting trustees. In case of the death, resignation or the inability of any voting trustee to act, the vacancy so occurring shall be filled by the appointment of a successor or successors, to be made as follows: Any successor in the line of succession to Frederick Strauss shall be appointed by the firm of J. & W. Seligman & Co., as such firm may from time to time be constituted; any successor in the line of succession to James Speyer shall be appointed by the firm of Speyer & Co., as such firm may from time to time be constituted, and any other successor shall be appointed by two thirds of the other voting trustees. All such appointments shall be made by written instrument. The term voting trustees as used herein, and in said stock trust certificate, shall apply to the parties of the second part and their successors hereunder. Notwithstanding any change in the voting trustees, the voting trustees for the time being may adopt and issue stock trust certificates in the names of the original voting trustees, the parties hereto of the second part.

"Fourth: The action of a majority of the voting trustees expressed from time to time at a meeting shall, except as otherwise herein stated, constitute the action of the voting trustees and have the same effect as if assented to by all. At any meeting of the voting trustees, any voting trustee may vote in person or by proxy to any other voting trustee. The voting trustees may adopt their own rules of procedure. Any voting trustee may act as a director or officer of the Railroad Company or of any subsidiary or controlled company; and he, or any firm of which he may be a member, or any corporation of which he may be stockholder, director or officer, may contract with the Railroad Company or any subsidiary or controlled company, or he or become pecuniarily interested in any matter or transaction to which the Railroad Company or any subsidiary or controlled company may be a party, or in which it may in any way be concerned, as fully as though he were not a voting trustee.

"Fifth. In voting the stock held by them (which they may do either in person or by proxy signed by any four of them and running to any one or more of them or to any

other person or persons) the — voting trustees will exercise their best judgment from time to time to select suitable directors, to the end that the affairs of the — Rail [fol. 495] road Company shall be properly managed, and, in voting and in acting on other matters which may come before them at any stockholders' meeting, will exercise like judgment; but they assume no responsibility in respect to such management or in respect of any action taken by them or in pursuance to *of* their consent thereto as such stockholders, or pursuant to their votes so cast, and no voting trustee incurs any responsibility by reason of any error of law or any matter or thing done or omitted under this agreement except for his own individual malfeasance.

“Sixth. The voting trustees possess, and shall be entitled in their discretion to exercise, all rights and powers of absolute owners of said stock, including the right to vote for every purpose and to consent to any corporate act of said \* \* \* Railroad Company. The voting trustees will not, however, during the pendency of this agreement, vote in respect of the shares of the capital stock of the Railroad Company held by them, to authorize the creation of any mortgage in addition to said prior lien mortgage, adjustment mortgage and income mortgage, nor any increase in the amount of the preferred stock of the Railroad Company at present authorized, viz., \$200,000,000, except, in each instance, with the consent, given at a meeting called by the voting trustees for the purpose, of holders of a majority in amount of the trust certificates for preferred stock outstanding, and of a majority in amount of such part of the trust certificates for common stock as shall be represented at such meeting, the holders of each class of trust certificates voting separately and either in person or by proxy.”

It will be observed that under the fourth paragraph “any voting trustee may act as a director or officer of the Railroad Company or of any subsidiary or controlled company; and he, or any firm of which he may be a member, or any corporation of which he may be a stockholder, director or officer, may contract with the Railroad Company or any subsidiary or controlled company, or be or become pecuniarily interested in any matter or transaction to

which the Railroad Company or any subsidiary or controlled company may be a party, or in which it may in any way be concerned, as fully as though he were not a voting trustee." Thus a voting trustee selected to manage the property of the stockholders is authorized to deal with himself in such fiduciary relation, which is clearly repugnant to the law as to the duties of trustees acting in a fiduciary relation.

[fol. 496] Furthermore, such provisions are in direct violation of Section 3161, Mo. R. S. 1909, which provides as follows:

"No president, director, officer, agent or employe of any railroad company, or other corporation operating a railroad, shall hereafter be interested in any manner, directly or indirectly, in furnishing materials or supplies to such company; no- shall such officer, agent or employe of any railroad company, or other corporation owning, controlling or managing a railroad, be interested, directly or indirectly, in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or operated by the corporation or association of which he is an officer, agent or employe. Any president, director, officer, agent or employe of any such railroad company who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a term of not less than three months nor more than one year, or by both such fine and imprisonment, and each day any such violation continues shall be a separate offense."

Under the fifth paragraph it is provided that the voting trustees "assume no responsibility in respect to such management or in respect to any action taken by them or in pursuance to their consent thereto as such stockholders, or pursuant to their votes so cast, and no voting trustee incurs any responsibility by reason of any error of law or of any matter or thing done or omitted under this agreement except for his own individual malfeasance." Thus it appears that the voting trustees are not to assume any

responsibility although acting for and instead of all stockholders of the New Company.

Under the sixth paragraph it is provided that preferred stock may be issued by the voting trustees when authorized by the "holders of a majority in amount of the trust certificates for preferred stock outstanding, and of a majority in amount of such part of the trust certificates for common stock as shall be represented at such meeting." This provision of the voting trust is in direct violation of section 10 of Article XII of the Constitution of this State which provides that no corporation shall issue preferred stock without the consent of all of the stockholders. Section 3065 Mo. R. S. 1909 follows the provision of the Constitution. [fol. 497] We have very carefully reconsidered our action in disapproving the voting trust provision submitted in the original plan of reorganization in the light of briefs of counsel, both in opposition to such action and in support thereof, with the result that we still adhere to our former views.

## V

### In Conclusion

In all other respects the motion of said stockholders for a modification is hereby denied. The report and order entered herein on December 22, 1915, should be and is hereby modified in conformity with the views expressed in this supplemental report. A supplemental preliminary order should be entered in conformity with the views herein expressed.

Shaw and Bean, CC., concur.

McQuillin, C., concurs in separate report.

### Separate Concurring Opinion

McQuillin, Commissioner: I concur in the supplemental report and think a brief consideration of the principle involved should be given respecting the denial by the applicants and other parties herein of the power of the Commission to ascertain, first whether the plan is consistent with the Constitution and laws of the State, and, second, whether it harmonizes with the public policy of the State.

The precise point of this contention is that in seeking to

determine these matters the function of interpreting laws must be exercised, and as this is essentially a judicial function, it may not be invoked by the Commission, a nonjudicial body. Therefore, as the Commission is not a court and is not possessed of any judicial attributes whatever, it is mere usurpation of power for it to attempt to say that the plan of reorganization is or is not in contravention of the organic law of the State, or, out of harmony with its sound public policy as evidenced by its laws. It is conceded that the avowed function of the Commission is to seek to protect the public interests, but in so doing it is argued that it should limit its activities to discover whether (1), the amount of capitalization, and (2), the fair value of the properties involved, are ample to insure adequate transportation service.

Thus restricted, if the amount of capitalization and property are found sufficient for the purpose designed, the further question whether the plan is legal or illegal, or replete with or devoid of equity, tested by the will of the people [fol. 498] of the State, as that will appears expressed in the Constitution and laws, should be put out of view. Obviously the acceptance of this principle and giving it free application would destroy utterly the power of the Commission to safeguard the public interest and reduce it to a mere registering machine, to register, without question, the desire of any applicant committee of reorganizers. Thus the Commission would be compelled to surrender the undoubted right of the State to enforce its supreme control and laws relating to railways. Moreover, such abrogation or abridgment of the powers of the State might result in the approval of a plan in direct and flagrant violation of our Constitution and laws, and have the certain effect of deceiving and deluding the public and investors into the belief that the plan conformed precisely to all legal requirements and was entirely fair and equitable. An approval by the Commission of the plan would be a finding upon which the public would have the right to rely, and upon which it incontestibly would rely.

It is idle to expect that the Commission, or any public officer vested with responsibility, should sanction a plan without reasonable assurance of its fairness, equity and entire legality. The legality may be ascertained only by

knowing the essential mandatory legal requirements; these may be known only from an examination of the law; and the intention of the law may be arrived at only from its reasonable interpretation.

Such powers may be exercised by any public officer, whether executive or administrative or merely ministerial. The public officer in all of his official actions must follow, not disregard, the law.

The Commission has found as a fact, because of the express prohibition of the law, that the proposed voting trust is illegal, in that it takes the absolute control of the railway corporation out of the hands of its stockholders for a period of five years, where it is placed by the Constitution, and lodges such control in the hands of certain persons constituting a board of trustees, selected by and representing the reorganizers only.

#### Supplemental Preliminary Order No. 1

The petition of J. & W. Seligman & Company, and Speyer & Company, as reorganization managers, for the reorganization of the St. Louis and San Francisco Railroad Company, [fol. 499] pany, and for an order authorizing the issue of stocks and bonds, and containing the proposed plan and agreement of reorganization of said railroad company, having been filed with this Commission requesting a preliminary order of approval of said plan and agreement of said reorganization, as provided by the provision of section 62 of the Public Service Commission law; and the Commission having on December 22, 1915, made and filed its report containing its findings of fact and conclusions thereon.

It further appearing to the Commission that certain stockholders thereafter submitted to the Commission for consideration certain proposed modifications of said original report and order.

Now, upon due consideration of the proposed plan and agreement of reorganization as presented and modified by said original report and order of this Commission, and the motion of said stockholders for modification on said report and order, the views of this Commission in respect thereto are now expressed in this supplemental report and preliminary order of approval, as follows:

Ordered: 1. That the Commission does hereby approve said proposed plan and agreement of reorganization of the St. Louis & San Francisco Railroad Company, provided said plan and agreement are modified to conform to the requirements and provisions as set forth in the original report of this Commission, dated December 22, 1915, and as further modified in this supplemental report and order of the Commission containing its findings of fact and conclusions thereon, and both of said reports are referred to and made a part hereof.

Ordered: 2. That the Commission reserves its full right and authority to approve the prior lien mortgage, cumulative adjustment mortgage, and income mortgage to be hereafter issued by said New Company, as provided in said plan, as to form and substance thereof, when hereafter submitted to the Commission, before their final execution and delivery.

Ordered: 3. That the Commission reserves jurisdiction of the subject-matter and of the parties, for the purpose of entering such additional or supplemental order or orders herein as the facts may from time to time warrant, and that this case be continued for such further action.

[fol. 500] Ordered: 4. That the Secretary of the Commission forthwith serve on each of said applicants and interveners a certified copy of this order and the supplemental report filed herein.

Ordered: 5. That the petitioners, J. & W. Seligman & Company and Speyer & Company, as reorganization managers, be and they are hereby required to notify the Commission, in the manner required by section 25 of the Public Service Commission law, within thirty days after receipt of a certified copy of this order and the report filed herein, whether the terms of this order are accepted.

## Ex. 17b

Public Service Commission Reports, Vol. 4, Missouri, March 25, 1916, to March 9, 1917, pp. 95-100

## Case No. 974

In the Matter of the Application for Authorization of the Reorganization of ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY and for an Order Authorizing the Issue of Stock and Bonds

Submitted May 31, 1916. Decided June 5, 1916

Motion for Rehearing Overruled June 21, 1916. Second Motion for Rehearing Overruled June 26, 1916

## Report of the Commission

## The Commission:

This is an application for the authorization of a reorganization of the St. Louis & San Francisco Railroad Company under the laws of this state. The plan, except as hereinafter noted, is substantially the same as that filed with this Commission by the same applicants in case No. 815, decided December 22, 1915. The facts are fully set forth in the report of the Commission in that case (3 Mo. P. S. C. 664) and need not be repeated here.

While the plan as proposed in said case No. 815 was commendable as to many of its features, two objections thereto made by a large number of stockholders were sustained by the Commission, namely, (1) the provision authorizing the holders of five percent income bonds of the new company to convert the same into six per cent preferred stock of like par value, without the consent of the holders of the common stock, and (2) the provision for the management of [fol. 501] the business affairs of the new company for a period of five years by a voting trust consisting of seven members, all of whom were to be selected by the representatives of the bondholders. There were other minor objections, but as they are not regarded as vital, they need not be referred to. The Commission then filed its report and made and entered an order (which, so far as consistent, are hereby made a part hereof) refusing to authorize the

organization prayed for with the said two objectionable provisions, each of which was considered in conflict with the Constitution and laws of this state.

In the plan now proposed the provision for the convertibility of income bonds has been eliminated, but the voting trust provision remains.

(1) All of the stockholders appearing in the case, including those who opposed the first reorganization under the plan then proposed, are now urging the authorization of the reorganization under the present plan. The position of these stockholders is that on account of the vast amount of capital necessary to finance the reorganization, they have been and are unable, either to provide the necessary capital or to induce the promoters of the present plant who represent the bondholders, to eliminate the voting trust provision; that if the reorganization is not effected under the laws of this state, the domicile of the present company, and the state in which the largest mileage of the railway system is situate, it will result in great financial loss to them. These stockholders still maintain that the voting trust is illegal, and they do not ask the Commission to recede from its former holding in that regard, but as no authoritative ruling has ever been made by the Courts of this state upon that question, and as the Public Service Commission law does not expressly require the Commission to pass upon the validity of such a provision of the reorganization plan, and as the most serious objection to the former plan has been removed, they now earnestly urge the Commission to authorize the reorganization, leaving the legality of the voting trust to be raised and adjudicated in a court proceeding, which they assure us will be done. Whether these stockholders would thus contest the voting trust in the courts, if the reorganization should be authorized and effected under the laws of this state, we cannot know, and such promise should have no influence upon our action in the premises. However, there is no doubt that the proper public officer, or any person interested, could institute a [fol. 502] proceeding in any court of competent jurisdiction in this state, and thus have the legality of the voting trust authoritatively and finally determined.

We are fully aware that we may bar the reorganization in this state because of this proposed form of corporate

control. In our former report we expressed the belief, and now believe, such form of control to be repugnant to our laws, yet, on the other hand, since the courts of this state have not yet spoken and we cannot authoritatively determine the question, we are not inclined to take such action.

(2) Under these facts, the question confronts us whether this Commission is warranted in excluding the reorganization from this state, thereby compelling the promoters to go to another state for that purpose, because of a provision against which the public and all parties interested can be fully protected at any time after the reorganization by a proceeding in a judicial tribunal. We have hesitated as to our duty in the premises, but after full consideration of the interests of the public and of the parties to be most seriously affected by our action, we have concluded to authorize the reorganization of the Company to be incorporated under the laws of this state, upon the terms and conditions as provided in an order of this date, leaving the validity of the voting trust for adjudication in the courts.

It is so ordered.

### Order

The petition of J. & W. Seligman and Company, and Speyer and Company, as reorganization managers, for the reorganization of the St. Louis & San Francisco Railroad Company, and for an order authorizing the issue of stocks and bonds, and containing the proposed plan and agreement of reorganization of said railroad company, having been filed with this Commission requesting a preliminary order of approval of said plan and agreement of reorganization as provided by the provisions of section 62 of the Public Service Commission law, and the Commission having heard proof and argument in explanation of and in support of the issuance of such preliminary order of approval of said proposed plan and agreement, and the Commission having on the date hereof made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, now, upon due consideration, it is,

Ordered: 1. That the Commission hereby authorizes the reorganization of the St. Louis & San Francisco Railroad

[fol. 503] Company by the incorporation of a New Company under the laws of Missouri for the purpose of purchasing and operating the properties described in the reorganization application.

Ordered: 2. That the new Company when organized under the laws of this state may execute and deliver its prior lien mortgage, its adjustment mortgage and its income mortgage, and mortgage thereunder all its railroads, franchises and other properties at any time acquired by it, upon application to the Commission, as follows:

\$93,398,500 prior lien mortgage bonds, Series A, 4 per cent.

25,000,000 prior lien mortgage bonds, Series B, 5 per cent.

40,547,818 adjustment mortgage bonds, 6 per cent.

35,192,000 non-cumulative income mortgage bonds, 6 per cent.

Ordered: 3. That the New Company when organized under the laws of this state may issue preferred and common stock, upon application to the Commission, as follows:

\$7,000,000 non-cumulative preferred stock, 6 per cent.

48,480,000 common stock.

and such additional amounts of preferred stock and common stock as this Commission may hereafter authorize to settle claims of general creditors of the railroad company, provided that the total amount to be issued for the purchase of the property, the payment of general creditors and the acquisition of the sums of money as shall actually be paid in cash, shall not exceed the sum of \$319,379,420.

Ordered: 4. That applicants, and any other person interested, are hereby authorized to file with this Commission a motion for a rehearing within ten days after receipt of a certified copy of this order and the report filed herein.

Ordered: 5. That the Commission reserves jurisdiction of the subject matter and of the parties for the purpose of entering such additional or supplemental order or orders herein, as the facts may warrant from time to time, and that this case be continued for such further action.

Ordered: 6. That this order shall take effect on June 15, 1916, and that the Secretary of the Commission shall forth-

with serve on applicants and interveners a certified copy of this order and the report filed herein.

[fol. 504] Ordered: 7. That the applicants be and they are hereby required to notify the Commission, in the manner required by section 25 of the Public Service Commission law, within ten days after receipt of the certified copy of this order and the report filed herein, whether the terms of this order are accepted and will be obeyed.

### Supplemental Order No. 1

It appearing that in accordance with the previous findings of the Commission the value of the properties to be acquired by the New Company in the reorganization is sufficient to permit the capitalization thereof to the amount of \$321,688,886, instead of \$319,379,420, as mentioned in the order of June 5, 1916, that said order of June 5, 1916, should be modified in the particulars hereinafter set forth; and that the report of the Commission filed on said date, contained in parenthesis the following: "(which, so far as consistent, are hereby made a part hereof)," which should be omitted therefrom now, upon due consideration, it is,

Ordered: 1. That the paragraph designated "Ordered: 2," in said order of June 5, 1916, be stricken out and the following substituted therefor:

"That the New Company when organized under the laws of this state may execute and deliver its prior lien mortgage, its adjustment mortgage and its income mortgage to secure the aggregate amounts of bonds, as provided by the plan and agreement dated November 1, 1915, and mortgage thereunder all its railroads, franchises and other properties at any time acquired by it, and the New Company when so organized may, upon application to the Commission, issue and deliver its said bonds described in said plan in the following amounts:

\$93,398,500 prior lien mortgage bonds, Series A, 4 per cent.

25,000,000 prior lien mortgage bonds, Series B, 5 per cent.

40,547,818 adjustment mortgage bonds, 6 per cent.

35,192,000 non-cumulative income mortgage bonds, 6 per cent."

Ordered: 2. That the figures "\$319,379,420" contained in paragraph 4 of said order of June 5, 1916, be stricken out and the figures "\$321,688,886" be substituted therefor, and that said paragraph be further modified by striking therefrom the proviso at the end thereof, and substituting in lieu thereof the following: "provided that the total amount of [fol. 505] stocks, bonds, notes and other evidences of indebtedness to be issued in the reorganization shall not exceed the sum of \$321,688,886," so that said paragraph 3 when amended shall read:

"Ordered: 3. That the New Company when organized under the laws of this state may also issue and deliver, upon application to this Commission, its stock in the following amounts:

\$7,000,000 non-cumulative preferred stock, 6 per cent.

\$48,480,000 common stock,

and such additional amounts of preferred stock and common stock as this Commission may hereafter authorize to settle claims of general creditors of the Railroad Company, provided that the total amount of stocks, bonds, notes and other evidences of indebtedness to be issued in the reorganization shall not exceed the sum of \$321,688,886."

Ordered: 3. That the words in parenthesis contained in the report of the Commission filed June 5, 1916, namely, "(which, so far as consistent, are hereby made a part hereof)" be and the same are hereby stricken therefrom.

Ordered: 4. That the Commission reserves jurisdiction of the subject matter and of the parties for the purpose of entering such additional or supplemental order or orders herein, as the facts may warrant from time to time, and that this case be continued for such further action.

Ordered: 5. That this supplemental order shall take effect this date, that the Secretary of the Commission shall forthwith serve on applicants and interveners a certified copy of this supplemental order, and that the applicants be and they are hereby required to notify the Commission, in the manner required by section 25 of the Public Service Commission law, within ten days after receipt of the certified copy of this order and the report filed herein, whether

the terms of the order of June 5, 1916, as modified by this supplemental order No. 1 are accepted and will be obeyed.

June 19, 1914.

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S. H. COWAN, being duly sworn, testified on behalf of interveners as follows:

Direct examination.

By Mr. Murphy:

The witness stated that his connection with the cases of E. B. Spiller et al. against the St. Louis and San Francisco Railroad Company and other railroad companies was that [fol. 506] he filed the petition in the case, first at Fort Worth, Texas, and also filed cases at Kansas City and at St. Louis, that all parties appeared in the cases with the understanding that the questions affecting local jurisdiction would be dismissed, and would be out of the way, and they have been accordingly dismissed; he thought that the case at Fort Worth had been dismissed, but there was some question as to the costs, the railroad did not want to pay them. (P. 37.)

In reply to the Special Master's question whether the defendant company was a party to the Kansas City litigation, the witness replied that it became a party, that subsequently there was a motion made to quash the service and all became parties at Kansas City, and the cases have so proceeded since that time. There was an application made for the confirmation of the sale of the St. Louis and San Francisco Railroad Company's properties, which was taken up before the United States Court here in St. Louis. Judgment was rendered in the case at Kansas City, from which an appeal was prosecuted. Witness testified that they had never received any formal notice, or any other notice, actual or otherwise, that referred to any order of the Court pertaining to the filing of claims within a certain time.

They had no knowledge of any kind or notice relative to orders of the Court fixing the time within which claims could be filed; the order of the Interstate Commerce Commission, which had been served on all the railroads, was

never recognized by the receivers or the railroad company, nor listed as a judgment or liability of the railroad company; it was completely ignored.

Witness testified that he found out that the Court had made an order fixing the time within which claims could be filed, according to his recollection, at the time he came to St. Louis at the time of the confirmation in August, 1916. They went to the Clerk's office to see what had been done and there obtained information respecting it; that was after the District Court at Kansas City had rendered judgment, and before the order of confirmation of the sale. (P. 38.)

They appeared there at the session of Judge Sanborn's Court, as the matter of confirmation of the sale came on, and there gave notice to the attorneys who were present, representing the various parties,—reorganization, railroad companies, and bondholders. That notice was in writing and it was delivered in person to Mr. Evans and to some other lawyers whose names the witness did not recollect. [fol. 507] He and those with him talked to Mr. Evans about it and to some of the other lawyers from New York.

The witness identified a copy of the notice which was served on all of the attorneys and parties in interest. Several copies were made and delivered to everybody.

In reply to a question put by the Special Master, in regard to who took the appeal at Kansas City, witness replied that it was taken by the defendant.

Mr. Murphy: Mr. Miller, to shorten this up, my understanding is that Judge Sanborn made an order requiring the receivers to schedule the claims against the receivers and the railroad company. Do you know anything about that?

Mr. Miller: That an order was made, as I recall it, but if that order was made it is in writing and I don't want to give the contents of it. I may be mistaken. There was an order made, contained in Article 10 of the final decree, requiring as schedule of claims that had been filed in this cause against the railroad company, that the receivers were required to file, and another one covering claims against the receivers, as I recall it, those that were allowed in the receivership suit.

Mr. Murphy: Well, that is not my understanding of the order. I'd like to offer those orders in evidence, and we will supply them.

Mr. Miller: They are objected to on the same general ground.

The Master: Taken subject to objection.

(Said order omitted here as same is embodied in Intervener's Ex. 20 (Final Decree—Art. 10.)

To which ruling of the Master the defendant then and there duly excepted.

Mr. Murphy: Will it be admitted that neither the receivers nor anybody else scheduled the claims of E. B. Spiller against the railroad company or E. B. Spiller, et al. against the railroad company?

Mr. Miller: Who do you mean by "anybody else"?

Mr. Murphy: Well, the railroad company or anybody else in interest. I am not sure whether that order was directed to the receivers alone or not.

[fol. 508] Mr. Miller: Scheduled where?

Mr. Murphy: In these cases—scheduled the claims in the receivership cases.

Mr. Miller: I don't admit that because I don't know what is contained in the schedule, and you couldn't ask me to admit that, because I don't know.

Mr. Murphy: Does that schedule appear in those printed volumes?

Mr. Miller: We will see if we can get that list of claims and examine it, and if it does not contain these claims that are here we will admit it in the record.

Mr. Murphy: That is all right.

Mr. Cowan: Our examination of the record fails to discover that there are claims listed in any schedule of liabilities at all. I am sure of that.

Witness testified that Mr. Deatherage was associated with him in this litigation from the time it was instituted in the Federal Court; he had a contract with Mr. Deatherage to handle these cases; Mr. Deatherage died about January 22, 1921. (p. 40.)

## Cross-examination.

By Mr. Miller:

Witness testified that Mr. Deatherage, who was a practicing lawyer in Kansas City, with an extensive practice, lived there at least twenty years. The two suits filed by Mr. Spiller in the Federal Court at St. Louis, were for the purpose of preventing the statute of limitations running on the claim, there being some uncertainty as to service.

Witness testified that he handled these claims before the Interstate Commerce Commission; when the claims were originally filed he had it worked out by the car number, point of origin, point of destination, and the figures made upon the basis of the minimum carload weight, at three cents per hundred pounds, whatever that was, the difference in the rate on that weight, for each of these shippers. The first of the detailed statements was filed in June, 1907, before the lapse of one year next after the passage of the Hepburn bill, which allowed one year after the passage of that act. (P. 41.) The act was suspended by a joint resolution and carried over until the latter part of August, but the statements were filed within a year after the passage [fol. 509] of the act. The judgment at Kansas City covered all claims where the shipment was made on or after August 29, 1906, and covered some claims that were in that case before the Interstate Commerce Commission. The schedule took only the claims that had been checked by the rail road as being correct. There are claims which were not checked before the findings of the Commission. All the claims that he presented at that time which were checked were embraced in a suit at Kansas City. Then claims were filed since, up to November, 1908. All the claims that were embraced in the judgment in those cases in the Kansas City District Court, were all filed by the shippers within the period as provided by law, a two-year period, and these claims covered shipments which moved between the latter part of August, 1906, and November 17, 1908. (P. 42.)

Witness testified that he did not appeal for Mr. Spiller and the other claimants from the final decree in the Frisco Receivership cases, or from the order confirming the sale, or from any of the orders made in the Frisco Receiver-

ship cases at St. Louis, because they were not parties and had no right in that case. (P. 43.)

The attention of the witness was directed to the fifth line from the bottom the first page of the notice which had been identified, and the witness was asked whether the words that are blurred—"and used by"—in that line, were in the notice as served. The witness replied that he presumed so, he did not know, it would not be material. They had a judgment for the moneys that the railroad company had collected.

Mr. Murphy:

Q. And you intended to assert that as a prior right in securing the claims of the interveners?

A. It ought to be in the notice.

Mr. Miller: Well, the notice will speak for itself. That is all, Judge. (P. 43.)

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E. B. SPILLER, being duly sworn, testified on behalf of the interveners, as follows:

Direct examination.

By Mr. Murphy:

Witness testified that he is the Secretary of the Cattle Raisers' Association of Texas, and the plaintiff in cause No. 4308 in the District Court at Kansas City, and one of the plaintiffs in cause No. 4320 in said Court. The other parties [fol. 510] who are named as plaintiffs in case No. 4320, had nothing to do with the litigation.

Q. Mr. Spiller, was any notice of any kind ever served on you, or communicated to you by anyone that the District Court of the United States, for the Eastern Division of the Eastern District of Missouri, had made an order fixing the time within which claims against the St. Louis & San Francisco Railroad Company could be filed, or be barred?

Mr. Miller: I object to that because the final decree recites that notice has been given to all parties who could have any claims.

The Master: Overruled. Taken subject to objection.

To which ruling of the Master, defendant by counsel then and there duly excepted and still except. (p. 44.)

A. No, sir.

[fol. 511] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 4174

REPORT OF SPECIAL MASTER ON RECEIVERS' FIRST BI-MONTHLY  
REPORT

I respectfully report as follows:

The Receivers in the above entitled cause, under the authority and requirements of the order of their appointment filed herein on May 27th, 1913, have filed in the office of the Master, herein, their first bi-monthly report of their administration of the trust committed to them, which report covers their operations, as Receivers, for the period from May 28th to June 30th, both inclusive, 1913.

I have, with the assistance of a competent accountant, examined the report, which is hereto annexed, together with [fol. 512] the accounts and business of the said Receivers for the period named, as the same are recorded and found in the books, statements and vouchers of said Receivers, and I find the statement of cash receipts and disbursements contained in said report to be true and correct, as therein stated, with the following exception:

The Receivers have included in the said report the amount of \$603,849.96, as having been turned over to them by St. Louis and San Francisco Railroad Company, at the close of business on May 27th, 1913.

In this connection, I find that the following amounts, forming a part of said \$603,849.96, were not, in fact, received by the Receivers, but were retained by certain banks and trust companies, herein named, where they were on deposit, and by such depositaries were applied on account of loans made by such depositaries to the St. Louis and San Francisco Railroad Company. At the close of busi-

ness on May 27th, 1913, the following amounts were on deposit to the credit of St. Louis and San Francisco Railroad Company with the following depositaries, and were by them appropriated upon the respective debts of said Railroad Company owing them:

National City Bank of New York .....	\$5,858.96
Equitable Trust Co. of New York .....	33,537.37
Mechanics-American National Bank of St. Louis .....	100,566.67
National Bank of Commerce, St. Louis .....	55,197.78
Third National Bank of St. Louis .....	49,477.49
Central States National Bank (Memphis) ..	24,908.35
Total .....	<u>\$269,546.62</u>

I have been informed by the Receivers herein, that the books and accounts of the Receivers have been adjusted [fol. 513] since June 30th, 1913, to show the facts as above stated, and that such adjustment will appear in their second bi-monthly report.

The total receipts for the period  
covered by this report, which  
actually have come into the  
hands of the Receivers were \$5,569,785 85

Less the amount shown above  
as retained by depositaries. 269,546.62

	<u>\$5,300,239.23</u>
The total disbursements were .....	4,935,942.13

The balance of receipts over disbursements was .....	<u>\$364,297.10</u>
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In my examinations all vouchers covering payments have been examined by me, or my accountants, with the exception of the pay checks, which amount to upwards of forty thousand in number. As to these, I have checked up to the total pay checks paid, each day, with the machine lists in the Auditor's office, and which agreed with such payments as shown by the cash book.

In this connection, I have thought it best to call the Court's attention to the following items of payments, which have been made by the Receivers, since their appointment,

over sixty per cent in number of the payments having been made on May 28th, 1913, which was the first day of their receivership, and before they had seen, or were made acquainted with, the full meaning of the order of the Court. The payments were made in perfect good faith, and the facts are mentioned by me, not to in any way criticise any one, but to make full report of the facts covering the trust, as I find them to be:

[fol. 514] Statement Showing Payments Made by the Receivers from May 28 to June 30, Both Inclusive, 1913, for Which There is Not Yet Any Order of the Court

	Obligations incurred during six months from Nov. 28, 1912, to May 27, 1913, in- clusive, and paid without order of court since the receivership	Obligations incurred prior to Nov. 28, 1912, and order of court paid without
Loss and Damage:		
Freight . . . . .		\$6 00
Stock . . . . .	\$273 78	105 00
Property . . . . .	50 34	364 99
Delay to baggage . . . . .	5 00	
Detouring train—wreck . . . . .	50 00	
Fires set out . . . . .	10 00	
Injuries to Individuals . . . . .	1,462 40	
Materials and Supplies . . . . .	4,146 10	
Fuel . . . . .	1,201 77	
Material and Labor on		
Buildings . . . . .	2,662 20	
Rents of Offices, Telephones, etc. . . . .	80 50	
Repairs to Equipment . . . . .		223 03
Turning Engines . . . . .	13 00	
Expenses Joint Facilities . . . . .	315 17	
Use of other tracks . . . . .	535 60	

## Statements Showing Payments Made—Continued

Fees:	Obligations	
	incurred during six months from Nov. 28, 1912, to May 27, 1913, in- clusive, and paid since the receivership without order of court	Obligations incurred prior to Nov. 28, 1912, and paid without order of court
For taking depositions	36.30	.....
Recording deeds	2.90	.....
Protest fees	2.65	.....
Professional services of P. L. Williams, Attor- ney	50.00	.....
Unclaimed wages	.....	15.75
Pay Drafts	.....	609.18
Amount remitted for interest due July 1, 1913, on account of Chester, Perryville & Ste. Genevieve Ry. Co. 1st Mortgage 5% Bonds	700.00	.....
	<hr/> \$11,597.71	<hr/> \$1,323.95
Total		\$12,921.66

I further respectfully report to the Court that on page 4 of my report, dated June 26th, 1913, on the Receivers' Petition [fol. 515] No. 8, filed June 30th, 1913, I recommended that the Receivers be given leave to apply the moneys in their hands towards the discharge of the interest falling due July 1, 1913, upon the Refunding and Underlying Mortgages, and included in my said report was an item of "\$112.00" (see page 3, of Petition No. 8, printed copy), for payment of interest on the Southern Missouri and Arkansas Railroad five per cent bonds, and an item of \$135,100.00 (see page 4, of Receivers' Petition No. 8), for payment of rental, which is represented by interest on the Kansas City, Fort Scott and Memphis Preferred Stock Trust Certificates, both due on July 1, 1913. The item of "\$112.00" appearing on page 3 of the Receivers' said Petition No. 8, should be \$112.50. The said item of \$135,100.00" should have been \$150,000.00. I find and, therefore, report that the Receivers, when making their remittances and payments for the interest due July 1, 1913, upon the Refunding

and Underlying Mortgages, pursuant to your order of June 27th, 1913 (No. 8), remitted the full amount of \$112.50, then due on the Southern Missouri and Arkansas bonds, and the full amount of \$150,000.00 then due on the Kansas City, Fort Scott and Memphis Preferred Stock Trust Certificates. The petition of the Receivers which was filed June 30th, 1913, top of page 6, correctly states the amount of the Kansas City, Fort Scott and Memphis Preferred Stock Certificates at \$150,000.00, as the Court will see, but upon page 4 of their said petition, this item is incorrectly stated by them, at \$135,100.00. The Court, in its order of June 27, 1913, following the figures given in the petition of the Receivers, in fixing what sums should be paid by them, adopts the erroneous sum of \$135,100.00 (see page 3, Order No. 8), instead of the correct sum of \$150,000.00.

[fol. 516] I further report that the Receivers herein, on June 18th, 1913, settled a judgment obtained by J. L. Driver et al., vs. St. Louis and San Francisco Railroad Company, in Tennessee, which judgment, with costs, amounted to \$4,355.36. That said judgment was paid upon the advice of the Receiver's counsel in order to protect the trust. This item of expense arose from a claimed breach of covenant by which St. Louis and San Francisco Railroad Company, in accepting a deed to a parcel of land at Osceola, Arkansas, for purpose of erecting a station thereon, agreed not to move said station more than a certain distance from said location. That the said Railroad Company did later move said station further than allowed by the deed, but before doing so it was given a bond to protect the said Railroad Company from any damages claimed and collected therefor, and said bond is alive at present. That said Driver et al., prior to the filing of ancillary proceedings in the Federal Court at Memphis, Tennessee, by the complainant herein, sought the appointment of a separate Receiver for the property of St. Louis and San Francisco Railroad Company in the State of Tennessee, and it was to prevent such, and to properly protect the property of said Company committed by this Court to the care of the Receivers herein, that said judgment of \$4,355.36 was paid by your Receivers, as herein stated.

I desire further to report that upon examination of the printed record in this cause, I find that in the printing of the Receivers' Petition No. 8, filed June 30, 1913, there has been omitted from page 5 thereof the following interest obligation due on September 1, 1913, which was included in the original petition on file in this Court:

[fol. 517] "Kansas City, Memphis & Birmingham General 4% Bonds, \$66,460.00.

These bonds are secured by first mortgage on the Kansas City, Memphis & Birmingham Railroad, in possession of Receivers. This is a rental which the defendant Railroad Company is obligated to pay under its lease of said railroad."

I further report that the Receivers in their Petition No. 8, top of page 7, printed copy, thereof, state the amount of the bonded obligations due in October, 1913, at \$2,280,000.00 of the Ozark and Cherokee Central Railroad five per cent bonds, then outstanding, instead of \$2,880,000.00, which I find to be the fact. This was, however, a harmless error, as no interest on this item will fall due until October 1, 1913, and consequently nothing has been paid out on this item of \$2,880,000.00, in the sums disbursed under your order of June 27th, 1913.

Further reporting, I find that, with the correction of the errors hereinabove referred to, as to the amounts of interest due July 1, 1913, as stated in the Receivers' said Petition No. 8, the total amount of interest that became due and was payable on July 1, 1913, on the outstanding 4% Refunding Bonds and Underlying Bonds thereof, was \$1,876,177.50, instead of \$1,861,277.00 as shown near the foot of page 2 of said petition, and near the foot of page 2 of my report thereon; and as shown at the middle of page 2 of the order of the Court thereon.

All of which is respectfully submitted.

Thomas T. Fauntleroy, Special Master.

July 29th, 1913.

[fol. 518] Thos. H. West and B. L. Winchell, Receivers St. Louis and San Francisco Railroad

Report of Receipts and Disbursements for the Period May 28th to 31st, 1913, and month of June, 1913

Receipts

	Accrued prior to appoint- ment of re- ceivers and collected un- der receiver- ship	Accrued and collected un- der receiver- ship	Total
Balance of Cash, May 27, 1913	\$603,849.96	\$.....	\$603,849.96
Station Agents and Conduc- tors—on freight and pas- senger business.....	910,189.17	2,873,778.48	3,783,967.65
Railroad Companies—on traffic and car service balances...	395,374.21	4,377.15	399,751.36
Companies and Individuals— on claims and bills rendered.	228,444.45	37,511.45	265,955.90
United States Post Office Dep't —for mail service.....	67,528.74	8,964.98	76,493.72
United States Express Co.— for express service.....	39,767.26	.....	39,767.26
From Receivers' Temporary Loans .....	.....	400,000.00	400,000.00
Total Receipts.....	\$2,245,153.79	\$3,324,632.06	\$5,569,785.85

[fols. 519 & 520]

Disbursements

	Accrued prior to appoint- ment of receivers	Accrued under the receivership	Total
Station Agents—for back charges on freight.....	\$146,625.34	\$188,997.96	\$335,623.30
Railroad Companies—on traffic and car service balances...	396,286.58	32,754.63	429,041.21
Companies and Individuals— on miscellaneous accounts..	38,319.80	23,306.71	61,626.51
Pay Rolls.....	1,302,410.87	218,606.65	1,521,017.52
Material and Supplies.....	3,976.63	105,124.69	109,100.72
Taxes .....	584,526.58	628.79	585,155.37
Interest Coupons.....	1,419,427.43	324,950.07	1,744,377.50
Interest Rental.....	93,548.39	56,451.61	150,000.00
Loans Paid Off.....	.....	.....	.....
Equipment Trust Obligations.	.....	.....	.....
Total Disbursements...	\$3,985,121.02	\$950,821.11	\$4,935,942.13
Cash Balance June 30th, 1913.....	.....	.....	\$633,843.72

Recapitulation			
Receipts :	Railroad Co., acct. prior to May 28, 1913	Receivers	Total
May 28, 1913, to date.....	\$2,245,153.79	\$3,324,632.06	\$5,569,785.85
Disbursements :			
May 28, 1913, to date.....	3,985,121.02	950,821.11	4,935,942.13
Balance .....	\$1,739,967.23	\$2,373,810.95	\$633,843.72
Respectfully submitted, Receivers.	Thos. H. West, Benjamin L. Winchell,		
Received July 9, 1913. T. T. F., Sp. M.			

[fol. 521] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 4174

REPORT OF SPECIAL MASTER ON RECEIVERS' SECOND BI-MONTHLY REPORT

I respectfully report as follows :

The Receivers in the above entitled cause, under the authority and requirements of the order of their appointment filed herein on May 27th, 1913, have filed in the office of the Master herein, their second bi-monthly report of their administration of the trust committed to them, which report covers their operations as Receivers, for the period from July 1st to August 31st, both inclusive, 1913.

I have examined the report, which is hereto annexed, together with the accounts and business of the said Receivers for the period named, as the same are recorded and found in the books, statements, vouchers and correspondence of said Receivers, and I find the statement of cash receipts and [fol. 522] disbursements contained in said report to be true and correct as therein stated.

The method of examination of all vouchers by myself, or my accountant, has been the same as obtained in the examination of the Receivers' first bi-monthly report, as shown on page three of my report thereon, filed herein July 30th, 1913.

Without intending to make any adverse criticism of certain payments made by the Receivers in perfect good faith, but for which no order of this Honorable Court has yet been made, the Court's attention is called to the following amounts paid by the Receivers during the period covered by this report, all of which, excepting three items shown herein, accrued within six months of May 28th, 1913, the date when this receivership began:

Nine Claims for loss and damage to baggage, etc., all of which accrued within six months of the receivership, excepting one item of \$4.25 .....	\$93.00
Paid Missouri Pacific Railway Company the proportion due by the defendant Railroad Company as the cost of operating the joint interlocking plant at Williamsville, Missouri, during August, 1912, under a contract with said Missouri Pacific Railway Company .....	59.43
Paid for damage to stock on the right of way incurred May 2nd, 1913 .....	50.00
Paid to Cash Lawhead, Clerk of Circuit Court of Howell County, Missouri, in satisfaction of judgment .....	844.25

This judgment was paid in the case of C. E. Geary v. St. Louis and San Francisco Railroad Company for injuries [fol. 523] received by Geary on the 11th of October, 1911, while waiting for a train at the defendant's station in the Town of Pomona, in said County of Howell.

Judgment was rendered against the defendant, on the trial of the case, for \$2,750.00 and costs. The case was appealed to the Springfield Court of Appeals, the appeal bond being signed by the defendant and its district attorney, W. J. Orr, without any consideration passing to Mr. Orr, but wholly to protect the property of the Railroad Company and to save it from being levied upon and sold by the Sheriff to satisfy the amount of the judgment.

Upon appeal, the judgment was affirmed for \$750.00 and costs. The appeal of the case and the execution of the bond by the surety redounded to the benefit of the Railroad Company in the sum of \$2,000.00. If the appeal bond had not been so executed the defendant would have been compelled to pay the whole amount of said judgment, to-wit

\$2,750.00, and costs, in order to prevent its property from being levied upon and sold.

In addition to the above items, the Receivers have, during the period covered by this report, made certain small payments for which no orders have thus far been issued, which payments aggregate about \$500.00 and represent a reimbursement of agents' accounts for items paid by agents, mainly for loss and damage to stock on the right of way, incurred within two or three months of the appointment of these Receivers, and the drafts representing which payments were not presented until after June 30th, 1913.

All of which is respectfully submitted.

Thos. T. Fauntleroy, Special Master.

St. Louis Mo., September 27th, 1913.

[fol. 524] St. Louis and San Francisco Railroad—Thos. H. West, W. C. Nixon and W. B. Biddle, Receivers

Report of receipts and disbursements for the months of  
July and August, 1913

	Receipts		
	Accrued prior to appoint- ment of re- ceivers and collected un- der receiver- ship	Accrued and collected un- der receiver- ship	Total
Balance of Cash, June 30, 1913..	.....	.....	\$633,843.72
Station Agents and Conductors, on Frt. and Pass. Business...	\$77,641.76	\$7,022,617.04	7,100,258.80
Railroad Companies, on Traffic and Car Serv. Balances.....	299,953.84	613,953.36	913,907.20
Companies and Individuals, on Claims and Bills rendered....	226,302.94	445,696.75	671,999.69
United States Post Office Dep't, for Mail Service.....	5,568.82	134,661.73	140,230.55
United States Express Co., for Express Service.....	97,357.32	231,430.52	328,787.84
Total Receipts.....	\$706,824.68	\$8,448,359.40	\$9,155,184.08

[fols. 525 &amp; 526]

## Disbursements

	Accrued prior to appointment of receivers	Accrued under the receivership	Total
Station Agents, for Back			
Charges on Freight.....	\$20,237.68	\$526,254.71	\$546,492.39
Railroad Companies, on Traffic and Car Service Balances....	191,198.71	495,457.48	686,656.19
Companies and Individuals, on Miscellaneous Accounts.....	207,326.02	552,750.76	760,076.78
Pay Rolls.....	78,446.49	2,792,613.12	2,871,059.61
Material and Supplies..... (a) 9,686.93	1,004,142.74	1,013,829.67	
Taxes .....	682.10	45,811.00	46,493.19
Interest Coupon.....	220,354.29	244,240.71	464,595.00
Loans paid off.....		400,000.00	400,000.00
Equipment Trust Obligations...		773,442.32	773,442.32
Bank Balances applied on loans.	257,473.05		257,473.05
Sinking Funds.....	2,990.00	1,610.00	4,600.00
Total Disbursements.....	\$988,395.27	\$6,896,322.93	\$7,824,718.20
Cash Balance August 31, 1913. ....			\$1,964,309.60

(a) This was not, in fact, an actual cash disbursement, but an offset settlement with the Paris & Great Northern R. R. Co., an auxiliary line owned by the Frisco.

Respectfully submitted, Thomas H. West, W. C. Nixon, W. B. Biddle,  
Receivers.

September 6, 1913.

[fol. 527] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 4174

I respectfully report as follows:

The Receivers in the above entitled cause, under the authority and requirements of the order of their appointment filed herein on May 27th, 1913, have filed in the office of the Master herein, their third bi-monthly report of their administration of the trust committed to them, which report covers their operations, as Receivers, for the period from September 1st to October 31st, both inclusive, 1913.

I have examined the report, which is hereto annexed and made a part hereof, together with the accounts and business of said Receivers for the period stated, as the same are recorded in the books, statements, vouchers and cor-

respondence of said Receivers, and I find that the statement of cash receipts and disbursements contained in said report is true and correct as therein stated.

The method of examination of all vouchers by myself, or my accountant, has been the same as obtained in the examination of the Receivers' first bi-monthly report, as shown on page three of my report thereon, filed herein July 30th, 1913.

All of which is respectfully submitted.

(Signed) Thomas T. Fauntleroy, Special Master.

St. Louis, Missouri, December 8, 1913.

St. Louis and San Francisco Railroad—Thos. H. West, W. C. Nixon,  
W. B. Biddle, Receivers

Report of Receipts and Disbursements for the months of September and  
October 1913

	Receipts		Total
	Accrued prior to appoint- ment of re- ceivers and collected un- der receiver- ship	Accrued and collected un- der receiver- ship	
[fol. 528] Balance of Cash Aug. 31, 1913.....			\$1,964,309.60
Station Agts. & Condrs.—on frt. & pass. business.....	\$23,271.41	\$7,696,378.06	7,719,649.47
Railroad Companies—on traf. & car serv. balances.....	50,308.90	842,135.20	892,444.10
Companies & Individuals—on claims & bills rendered.....	405,054.21	654,005.14	1,059,059.35
United States Post Office Dep't. —for mail service.....	668.60	145,529.08	146,197.77
United States Express Co.—for express service.....		128,022.52	128,022.52
Total Receipts.....	\$479,303.21	\$9,466,070.00	\$11,909,682.81

## Disbursements

	Accrued prior to appoint- ment of receivers	Accrued under the receivership	Total
Station Agents—for back charges on freight.....	\$6,284.62	\$622,939.40	\$629,224.02
Railroad Companies—on traf. & Car Serv. balances.....	45,053.88	722,239.80	767,293.68
Companies & Individuals—on miscellaneous accounts.....	545,477.71	702,997.29	1,248,475.00
Pay rolls.....	9,710.11	3,079,321.24	3,089,031.35
Material & Supplies.....	.....	1,658,783.39	1,658,783.39
Taxes .....	19,586.25	34,045.78	53,632.03
Interest Coupons.....	658,675.39	2,408,128.61	3,066,804.00
Loans paid off.....	.....	.....	.....
Equip. Trust Obligations— Frisco Construction Co.....	.....	150,019.74	150,019.74
Equipment Trust Obligations.....	.....	400,006.02	400,006.02
Interest Rental.....	.....	150,000.00	150,000.00
Sinking Funds.....	9,059.13	6,190.87	15,250.00

Total Disbursements... \$1,293,847.00 \$9,934,672.14 \$11,228,519.23

Cash Balance Oct. 31, 1913..... \$681,163.58

Respectfully submitted, (Signed) Thos. H. West, W. C. Nixon, W. B.  
Biddle, Receivers.

Mr. Murphy:

Q. Did you ever have any knowledge that any such order had been made?

To which question, counsel for defendant made the same objection, which objection was by the Special Master, overruled.

[fols. 529 & 530] To which ruling of the Special Master, defendant, by counsel, then and there duly excepted and still except. (P. 44.)

A. No, sir.

Counsel for interveners offered in evidence the bi-monthly reports made by the Receivers in this case, the receivership of the St. Louis & San Francisco Railroad Company, and the bi-monthly reports made by the receivers at the instance of the complainant, North American Company, general creditor, and the receivers of the Consolidated Cause, after the bills of foreclosure were filed, said receivers' bi-monthly reports being those filed between May 27, 1913, and May

24, 1914, the period covering the filing of the creditors' bill and the foreclosure proceedings under the mortgages, and those filed under date of Jan. 25, 1917.

Mr. Miller: All that will be admitted, subject to my general objection.

The Master: That will be the order (p. 47).

Said bi-monthly reports, as above referred to, are in words and figures as follows, to-wit:

[fol. 531] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT OF SPECIAL MASTER ON RECEIVERS' FOURTH BI-MONTHLY REPORT

The Receivers in the above entitled cause, under the authority and requirements of the order of their appointment, filed herein on May 27, 1913, having filed in the office of the Master herein their Fourth Bi-monthly Report of their administration of the trust committed to them, which report covers their operations as Receivers for the period from November 1st to December 31st, both inclusive, 1913, I respectfully report as follows:

I have examined the report, which is hereto annexed and made a part hereof, together with the accounts and business of the Receivers for the period covered, as the same are recorded and shown in the books, statements, vouchers [fol. 532] and correspondence of said Receivers, and I find that the statement of cash receipts and disbursements contained in said report is true and correct as therein stated, with the following exceptions:

The item of \$12,000, referred to in the foot-note to the Receivers' Report, has not been included and shown in the Receivers' cash book, either among the receipts or disbursements, it having been made the subject of a journal entry.

I find the facts relating to this item of \$12,000 to be as follows:

Prior to March 30, 1912, the St. Louis and San Francisco Railroad Company had advanced to Isaac T. Cook, Esq., at various times, amounts aggregating \$29,715.00, to pur-

chase sub-leases on certain lots at Joplin, Missouri, whereon it was desired to erect an office building to be used also as a passenger station for the Frisco at that place. By an agreement dated May 24, 1912, between said Cook and W. C. Nixon, Esq., then Vice-President of the St. Louis and San Francisco Railroad Company, it was provided that when said building was completed and accepted by the Frisco said Cook was to repay the amount thus advanced, which, with interest to March 30, 1912, amounted to \$31,-685.55, together with interest on this last named amount from April 1, 1912, to the date when said building was completed and accepted by the Frisco, and that such payment was to be made as follows:

By said Cook delivering his receipt for \$12,000, the amount agreed upon as his compensation for services in securing the 99-year leasehold estate on the lots of ground and sub-leases thereto and for erecting said building and leasing it to the Frisco; the balance of the amount to be [fol. 533] paid either in cash or in his promissory note due on or before two years from its date, with interest at 6%, and with certain securities agreed upon and therein named as collateral.

I further find that the terms of said agreement between said Cook and W. C. Nixon, Esq., as Vice-President, have been carried out by the delivery to the Receivers herein on or about December 19, 1913, of said Cook's receipt for \$12,000 for services and of his two years' note dated September 1, 1913, for the balance, or \$22,378.81, and of the agreed collateral thereto, which note includes interest to September 1, 1913, the date of the acceptance of said building.

I further find that among the assets taken over by the Receivers herein, as shown in their inventory filed herein September 27, 1913, with my report thereon, there is an item under "Cash advances account working funds" (see pages 11 and 12 thereof) entitled "I. T. Cook \$29,715.00," and that this represented the amount due from said Cook on said account on March 30th, 1912.

I further find that said amount of \$12,000 hereinabove referred to represented, in effect, a partial payment by said Cook on account of his obligation to the St. Louis and San Francisco Railroad Company and its Receivers of \$29,715

and interest thereon, and that it ought to have been included in the cash receipts of the Receivers as the same are shown in their cash book.

I also find that the amount of \$12,000 referred to above as compensation for the services of said Cook represented, in effect, a cash payment made to him by the Receivers herein for such services in accordance with the agreement of May 24, 1912, between said Cook and said W. C. Nixon, [fol. 534] as Vice President, and that said amount ought to have been included in the disbursements on the Receivers' cash book on the same date as said item of \$12,000 should have been shown in the cash receipts.

I further find that said amount of \$12,000 did not become due under said agreement between said Cook and said Nixon, as Vice-President, and was not due, until September 1, 1913, the date of the completion and acceptance of said building, and that therefore it was not an obligation of the St. Louis and San Francisco Railroad Company which accrued prior to the receivership herein, but became an obligation of the Receivers herein under the original order of their appointment, being a necessary expense of operating the railroads and conducting the business during their receivership. In view of this finding I think it best to call the Court's attention to the fact that in the receipt for the \$12,000 signed by said Isaac T. Cook under date of December 19, 1913, he acknowledges receipt from the St. Louis and San Francisco Railroad Company, prior to May 27, 1913, of said amount. While the method adopted in accounting for this transaction did not in any way affect the Receivers' cash balance, the matter is referred to herein not with a desire to criticise anyone, but to fully report the facts covering the trust, as I find them to be.

Respectfully submitted, Thomas T. Fauntleroy,  
Special Master.

St. Louis, Missouri, February 25, 1914.

[fol. 535] St. Louis and San Francisco Railroad—James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers

Report of Receipts and Disbursements for the months of November and December, 1913

Receipts			
	Accrued prior to appointment of Receivers and collected under Receivership.	Accrued and collected under Receivership.	Total
Balance of Cash Oct. 31, 1913.			\$981,163.58
Station Agents and Conductors—On freight and passenger business		\$7,412,000.08	7,412,000.08
Railroad Companies—On traffic and car service balances.	\$161,309.47	1,086,318.02	1,247,627.49
Companies and Individuals—On claims and bills rendered.	660,474.16*	1,145,170.79	1,805,644.95
United States Post Office Dept.—For mail service....	5.00	184,738.49	184,743.49
United States Express Co.—For express service.....		222,318.68	222,318.68
Total Receipts.....	\$821,788.63	\$10,050,546.06	\$11,553,498.27

Disbursements			
	Accrued prior to appointment of Receivers.	Accrued under the Receivership.	Total
Station Agents—For back charges on freight.....		\$754,589.62	\$754,589.62
Railroad Companies—On traffic and car service balances....	\$44,286.88	684,718.06	729,004.94
Companies and Individuals—On miscellaneous accounts .....	597,502.10	1,098,115.84*	1,695,617.94
Pay rolls .....	5,689.05	3,167,126.13	3,172,795.18
Material and Supplies.....		1,533,821.46	1,533,821.46
Taxes .....	640,492.85	401,738.34	1,042,231.19
Interest coupons .....	2,546.25	626,661.25	629,207.50
Loans paid off.....			
Equipment Trust Obligations..		36,442.32	36,442.32
Interest Rental .....		150,000.00	150,000.00
Total Disbursements.....	\$1,290,497.13	\$8,453,213.02	\$9,743,710.15
Cash Balance Dec. 31st, 1913.....			\$1,809,788.12

\*Includes \$12,000 receipted voucher in favor of Isaac T. Cook, for services, same amount included in item "Companies and Individuals on Claims and Bills rendered," being in part liquidation of his account.

Respectfully submitted, J. W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.

[fol. 537] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT OF SPECIAL MASTER ON RECEIVERS' FIFTH BI-MONTHLY REPORT

The Receivers in the above entitled cause, under the authority and requirements of the order of their appointment, filed herein on May 27, 1913, having filed in the office of the Master herein their Fifth Bi-Monthly Report of their administration of the trust committed to them, which report covers their operations as Receivers for the period from January 1st to February 28th, both inclusive, 1914, I respectfully report as follows:

I have examined the report, which is hereto annexed and made a part hereof, as well as the accounts and business of the Receivers for the period stated, as the same are recorded and shown in the books, statements, vouchers and correspondence of the Receivers, and I find that the state-[fol. 538] ment of cash receipts and disbursements shown in said report is true and correct as therein stated, with the following exceptions:

Two vouchers—one in favor of the Arkansas Grocery Company for \$11.39, and the other in favor of the Missouri Public Utilities Company for \$49.52—were returned to the Receivers and are still held by them pending the adjustment of questions which have arisen as to the amount due to the respective parties.

The Court's attention is respectfully called to the fact that during the period covered by this Report there were paid two certain judgments and costs—one amounting to \$51.65, and the other to \$53.15—on suits brought to recover damages for ejectment from a train on August 4, 1912, no order covering which has yet been made by this Court.

Respectfully submitted, Thomas T. Fauntleroy,  
Special Master.

St. Louis Mo., April 16, 1914.

[fol. 539] St. Louis and San Francisco Railroad—Jas. W. Lusk, W. C. Nixon, W. B. Biddle, Receivers

Report of Receipts and Disbursements for the Months of January and February, 1914

	Receipts		Total
	Accrued prior to appointment of receivers and collected under receivership	Accrued and collected under receivership	
Balance of Cash Dec. 31, 1913.....			\$1,809,788.12
Station Agents and Conductors—on freight and passenger business .....	\$.....	\$6,535,302.24	6,535,302.24
Railroad Companies—on traffic and car service balances... ..	72,248.77	780,458.00	852,706.77
Companies and Individuals—on claims and bills rendered. ....	514,688.79	1,078,123.87	1,592,812.66
United States Post Office Department—for mail service. ....		146,545.55	146,545.55
United States Express Co.—for express service.....		222,200.91	222,200.91
Receivers' Certificates.....		2,410,650.00	2,410,650.00
Bonds sold (collateral).....	14,199.06		14,199.06
Total Receipts.....	\$601,136.62	\$11,173,280.57	\$13,584,205.31

[fol. 540]

	Disbursements		Total
	Accrued prior to appointment of Receivers.	Accrued under the Receivership.	
Station Agents—for back charges on freight .....	\$.....	\$666,308.87	\$666,308.87
Railroad Companies—on traffic and car service balances... ..	49,726.16	474,739.12	524,465.28
Companies and Individuals—on miscellaneous accounts.. ..	536,415.11	1,177,478.23	1,713,893.34
Pay rolls .....	1,531.98	3,234,801.53	3,236,333.51
Material and Supplies .....	2,249,157.36	1,603,660.69	3,852,818.05
Taxes .....	29,498.70	17,856.77	47,355.47
Interest Coupons .....		1,383,660.00	1,383,660.00
Loans paid off .....			
Equipment Trust Obligations .....		782,436.30	782,436.30
Equipment Trust Obligations—Frisco Construction Company .....			
Sinking Funds .....		191,825.00	191,825.00
Bank Balances applied on loans .....		4,600.00	4,600.00
.....	53,623.63		53,623.63
Total Disbursements... ..	\$2,919,952.94	\$9,537,306.51	\$12,457,319.45
Cash Balance February 28th, 1914.....			\$1,126,885.86

James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers

## [fol. 541] IN UNITED STATES DISTRICT COURT

[Title omitted]

## REPORT OF SPECIAL MASTER ON RECEIVERS' SIXTH BI-MONTHLY REPORT

The Receivers in the above entitled cause, under the authority and requirements of the order of their appointment, filed herein on May 27, 1913, having filed in the office of the Master herein their Sixth Bi-Monthly Report of their administration of the trust committed to them, which report covers their operations as Receivers for the period from March 1st to April 30th, both inclusive, 1914, I respectfully reports as follows:

I have examined the report, which is hereto annexed and made a part hereof, as well as the accounts and business of the Receivers for the period stated, as the same are recorded and shown in the books, statement, vouchers and correspondence of the Receivers, and I find that the statement of cash receipts and disbursements shown in said report is true and correct as therein stated.

Thomas T. Fauntleroy, Special Master.

St. Louis, Missouri, September 30, 1914.

[fol. 543] St. Louis and San Francisco Railroad—James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers

## Report of Receipts and Disbursements for the months of March and April, 1914

	Receipts		
	Accrued prior to appointment of receivers & collected under receivership	Accrued and collected under receivership	Total
Balance of Cash Feby. 28, 1914	.....	.....	\$1,126,885.86
Station Agents and Conductors			
—On frt. and pass. business	\$.....	\$6,622,354.19	6,622,354.19
Railroad Companies—On traf. & car serv. balances.....	95,716.87	668,764.50	764,481.37
Companies & Individuals—On claims and bills rendered ..	252,937.50	1,141,328.66	1,394,266.16
United States Post Office Department—For mail service	.....	167,511.10	167,511.10
United States Express Co.—For express service.....	.....	128,022.52	128,022.52
Receivers' Certificates .....	.....	562,175.00	562,175.00
Total Recelpts .....	\$348,654.37	\$9,290,155.97	\$10,765,696.20

[fol. 544]

## Disbursements

	Accrued prior to appointment of Receivers.	Accrued under the Receivership.	Total
Station Agents—For back charges on freight .....	\$.....	\$575,873.86	\$575,873.86
Railroad Companies—On traf. and car service balances...	32,332.79	725,784.84	758,117.63
Companies & Individuals—On miscel. accounts .....	303,251.67	1,179,637.73	1,482,889.40
Pay rolls .....	1,754.21	3,186,132.05	3,187,886.26
Material and supplies .....	61,892.23	1,497,461.86	1,559,354.09
Taxes .....	102,821.37	156,287.33	259,108.70
Interest coupons .....	233.87	1,272,988.63	1,273,222.50
Loans paid off .....	.....	.....	.....
Equipment Trust Obligations Interest Rental .....	.....	365,006.02	365,006.02
Equipment Trust Obligations —Frisco Construction Co., .....	.....	150,000.00	150,000.00
	.....	163,625.00	163,625.00
Total Disbursements...	\$502,286.14	\$9,272,797.32	\$9,775,083.46
Cash Balance April 30, 1914.....			\$990,612.74

James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.

[fol. 545] IN UNITED STATES DISTRICT COURT

[Title omitted]

## FINAL REPORT OF RECEIVERS

Come now James W. Lusk and William B. Biddle, Receivers in the above entitled cause, and respectfully report that on November 1, 1916, they and their co-Receiver, William C. Nixon, now deceased, paid over and transferred to St. Louis-San Francisco Railway Company, the purchaser of the railroad of the defendant in the above entitled cause, under and in accordance with the final decree entered herein, the sum of \$6,233,352.35, said sum being all funds in their hands at the time of said payment and the cash balance on hand on October 31, 1916, as shown by their report as of that date filed herein, which report was duly approved by the Special Master herein on January 16, 1917; and that at the time of said payment said St. Louis-San Francisco Railway Company was let into the possession of the railroad of the defendant under and in accordance with the Order Confirming Sale, entered in the above entitled

[fol. 546] cause on August 29, 1916. A receipt of said St. Louis-San Francisco Railway Company, showing the payment to and receipt by it of said sum, is hereto attached, marked "Exhibit A," and made a part hereof.

Your Receivers ask that this, their final report, be approved.

Respectfully submitted, James W. Lusk, Wm. B. Biddle, Receivers.

Approved by me, June 25, 1917. Thomas T. Fauntleroy, Special Master.

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[fol. 547 & 548] EXHIBIT A TO REPORT OF RECEIVER

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF  
MISSOURI

In Equity No. 4174

NORTH AMERICAN COMPANY, Complainant,

v.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,  
Defendant

Consolidated Cause Final

Received of James W. Lusk, William C. Nixon and William B. Biddle, Receivers in the above entitled cause, the sum of Six Million Two Hundred and Thirty-three Thousand Three Hundred and Fifty-two Dollars and Thirty-five Cents (\$6,233,352.35), being the total amount of cash balance in the hands of said Receivers in said cause as of this date.

Dated at St. Louis, Missouri, November 1, 1916.

St. Louis-San Francisco Railway Co., by F. H. Hamilton, Its Treasurer.

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[fol. 549] At this point it was stipulated between counsel for interveners and counsel for the defendant and the St. Louis-San Francisco Railway Company, that the defendant company had on hand approximately \$600,000 at the

time of the appointment of the receivers under the general creditors' bill; that of this amount three hundred and thirty-four thousand and some odd dollars, as shown in the agreed statement of facts, was received by the receivers, the remainder of the approximately \$600,000 having been appropriated by the banks in offset of indebtedness of the railroad company to the banks.

Mr. Miller: Appropriated from the deposits in the banks and credited to the railroad company.

Mr. Murphy: Yes. (P. 47.)

Mr. Miller: The fact of their appropriation was not established until some months after the receivers were appointed.

Mr. Murphy: Yes. Now, I would like to offer in evidence the final report of the receivers and the order discharging the receivers. I have the order discharging the receivers, but I will supply the final report of the receivers.

Mr. Miller: Same objection.

The Master: I will admit it subject to the objection.

To which ruling of the Master the defendant then and there duly excepted.

Said order discharging the receivers was marked Exhibit 18, and is in words and figures as follows, to-wit:

EXHIBIT 18, ORDER DISCHARGING RECEIVERS—Filed Aug. 15, 1923. Jas. J. O'Connor, Clerk

### Order No. 210

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF  
MISSOURI

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Defendant

Consolidated Cause Final

This cause duly came on this day to be again heard upon the application of Receivers, St. Louis-San Francisco Rail-  
[fol. 550] way Company and complainant, for the discharge

of said Receivers from further service herein, and it appearing to the Court that the final report of said Receivers has been duly filed and approved by the Court and their compensation duly paid, and there being no cause why said Receivers should not be discharged, upon consideration whereof,

It is ordered, adjudged and decreed, that the Receivers herein, James W. Lusk and William B. Biddle, be, and they hereby are, finally discharged as Receivers in this cause, and their official bonds and the sureties thereon are hereby released and discharged.

It is further ordered, adjudged and decreed, that this cause is retained and kept open, and the Court reserves jurisdiction thereof and of all questions heretofore reserved in this cause, whether by the Final Decree entered herein March 31, 1916, the Order of Confirmation entered herein, August 29, 1916, the Order of Distribution entered herein November 6, 1917, or otherwise, including jurisdiction to ascertain and determine all claims, demands and liabilities against said Receivers and against the railroad and property delivered by said Receivers to the purchaser thereof under orders of this Court, and against such purchasers, which have arisen, or may arise, out of said receivership. All such claims, demands and liabilities, if not paid by said purchaser in due course, shall be made and presented by intervention in this Court for the purpose of being ascertained and determined in and by such proper intervention proceedings, and any orders, judgments or decrees so rendered in such proceedings may be enforced, and shall only be enforced, against the railroad and property so delivered by said Receivers to said purchaser, to the same extent and in the same manner as provided in the final decree and order confirming the sale of said railroad and property heretofore made and entered herein. Such intervention proceedings shall be filed in this cause in this Court on or before the first day of September, 1918, and after that date no further such intervention shall be permitted in this cause, and the rights of any claimants who shall not, on or before such date, have commenced intervention proceedings to avail themselves of the remedies herein pro-

vided for their benefit, shall cease and determine as to such railroad and property and the purchaser thereof.

It is further ordered, adjudged and decreed, that St. Louis-San Francisco Railway Company, the purchaser aforesaid, shall cause notice of the contents of this order [fol. 551] to be published in daily newspapers published respectively in the cities of Birmingham, Alabama; Memphis, Tennessee, and St. Louis, Missouri, the publication of such notice to begin not more than thirty days from the date hereof, and continue for once a week for a period of five weeks; and said St. Louis-San Francisco Railway Company shall also, within 30 days from the date hereof, cause a copy of this order to be mailed or otherwise transmitted to all parties known to it to be asserting claims or demands arising out of said receivership.

It is further ordered, adjudged and decreed, that all such claims and demands filed in this cause pursuant to this order be, and the same hereby are, referred to the Special Master heretofore appointed in this cause, who shall hear and report thereon to the Court with his recommendations; that said St. Louis-San Francisco Railway Company, be, and it is hereby, allowed 20 days from the date of the filing of such intervening petitions in which to answer or otherwise plead thereto respectively, and the respective claimants may reply or otherwise plead to said answers respectively within twenty days after the filing thereof.

It is further ordered, adjudged and decreed, that said St. Louis-San Francisco Railway Company shall have the right if it so elects, and at its own cost and expense, to be substituted a party in lieu of said Receivers in all or any litigation by or against said Receivers now pending on appeal or otherwise, or continue such litigation in the name of said Receivers.

Walter H. Sanborn, Circuit Judge.

January 29, 1918.

North American Company, one of the complainants in the above entitled cause, hereby consents to the making and entering of the above and foregoing order in said cause.

Thomas Bond, Its Solicitor.

Rail Joint Company, one of the complainants in the above entitled cause, hereby consents to the making and entering of the above and foregoing order in said cause.

Blodgett & Rector, Its Solicitors.

Bankers Trust Company and Neill A. McMillan, as Trustees, complainants in the above entitled cause, hereby con-[fol. 552] sent to the making and entering of the above and foregoing order in said cause.

Bankers Trust Company and Neill A. McMillan, as Trustees, by Nagel & Kirby, Their Solicitors.

St. Louis and San Francisco Railroad Company, defendant in the above entitled cause, hereby consents to the making and entering of the above and foregoing order in said cause.

W. F. Evans, Its Solicitor.

St. Louis-San Francisco Railway Company hereby consents to the making and entering of the above and foregoing order in said cause.

W. F. Evans, Its Solicitor.

Guaranty Trust Company of New York, Trustee, complainant in the above entitled cause, hereby consents to the making and entering of the above and foregoing order in said cause.

Guaranty Trust Company of New York, Trustee, by Franklin Ferriss, Its Solicitor.

Received, filed and entered, Jan. 29, 1918. W. W. Nall, Clerk.

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Mr. Murphy: That is the final report of the receivers showing the amount of cash on hand from operations turned over to the St. Louis-San Francisco Railway Company. I presume that the Master and the court will take judicial knowledge of the final decree.

The Master: I couldn't tell you what would be my legal rights in that matter.

Mr. Miller: Why don't you offer it in evidence?

Mr. Murphy: Well, there's a great deal of it that don't bear upon either your contentions or mine.

[fol. 553] Mr. Cowan: Mr. Miller, will you procure and file a statement showing the result of the operations from the year 1906 on down, as shown in the reports of the Interstate Commerce Commission?

Counsel for interveners offered in evidence a statement showing the operating income and the operating expense from 1906. Counsel for defendant objected to said statement for the reasons stated before; which objection was overruled by the Master, and said statement was admitted in evidence and marked Exhibit 18a.

To which ruling of the Master defendant duly excepted and still excepts. Said statement is in words and figures as follows:

[Vol. 554]

## EXHIBIT 18A

## St. Louis San Francisco Railway Company

Railway Operating Revenues, Expenses, Taxes, and Operating Income Years Ended June 30, 1906, to 1912, Inclusive, and July 1, 1912, to May 27, 1913, Inclusive

Year ended	Operating revenues	Operating expenses	Railway tax accruals	Total exp. and taxes	Railway op- erating income
June 30, 1906	\$30,752,227.96	\$19,434,142.72	\$521,697.01	\$19,955,839.73	\$10,796,498.23
do, 1907	37,190,857.78	23,422,356.67	516,195.49	23,938,551.76	13,252,306.02
do, 1908	33,905,028.64	23,411,896.11	548,531.64	23,960,427.75	9,944,600.89
do, 1909	35,651,389.77	23,168,917.11	1,027,081.82	24,195,998.93	11,455,390.81
do, 1910	39,131,058.27	26,885,491.61	946,288.31	27,831,779.92	11,299,278.35
do, 1911	40,842,519.45	27,230,368.09	1,267,594.18	28,497,962.27	12,344,557.18
do, 1912	39,618,188.33	26,611,473.29	1,390,475.93	27,991,949.22	11,626,239.11
July 1, 1912 to May 27, 1913	39,447,473.08	26,454,506.52	1,240,486.90	27,694,993.42	11,752,479.66
Total	\$296,538,853.29	\$196,619,152.12	\$7,448,350.88	\$204,067,503.00	\$92,471,350.28

Office of General Auditor, St. Louis, Missouri, December 15th, 1921.

[fol. 555] Mr. Murphy: I offer now the notice, marked Exhibit 19, which was served upon the various parties, testified to by Mr. Cowan.

Mr. Miller: That is objected to for the same reasons as stated previously, that no appeal was taken by the interveners from the order confirming the sale, or final decree or from any other order or decree in the receivership cases, is wholly incompetent and not material to any of the issues.

Objection overruled.

To which ruling of the Master the defendant then and there duly excepted. Said paper marked Exhibit 19 is in words and figures as follows, to-wit:

(EXHIBIT 19, NOTICE TO REORGANIZATION COMMITTEE, ETC.)

To Hon. Henry W. Taft, attorney for reorganization Committee and the St. Louis & San Francisco Railway Company, and others growing out of the receivership and the reorganization plan and the sale of property of the St. Louis & San Francisco Railroad Company to the St. Louis & San Francisco Railroad Company that it appears from the orders and proceedings in Consolidated Cause No. 4174 in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, North American Company, Plaintiff, vs. The St. Louis & San Francisco Railroad Company, Defendant:

You are hereby notified that E. B. Spiller and others whose names appear as plaintiffs in the copies of the Judgments in cause No. 4308, E. B. Spiller, vs. Missouri, Kansas & Texas Ry. Co., et al., and in cause No. 4320, E. B. Spiller, and others, Plaintiffs, vs. Missouri, Kansas & Texas Ry. Co., and others, Defendants, included in both causes is the Defendant, St. Louis & San Francisco Railroad Co., copies of which judgments as they pertain to the St. Louis & San Francisco Railroad Company are hereto attached. The said plaintiffs are judgment creditors of the St. Louis & San Francisco Railroad Company in the several amounts shown in said judgments arising out of the operation of the said Railroad Company in the collection of unlawful rates of freight on shipments of cattle as shown in said

judgments, held by the Interstate Commerce Commission to be unreasonable and which unreasonable rates to the amount held by the Interstate Commerce Commission to have been unreasonable as shown by said judgments and the order of the Interstate Commerce Commission referred to therein, was unlawfully collected and used by said Company in the same manner as other freight charges collected, on account of all of which the said plaintiffs in said judgment will assert their rights of payment thereof by the St. Louis & San Francisco Railway Company which has been organized to and have purchased the property of said St. Louis & San Francisco Railroad Company, the confirmation of which sale is now pending in said cause wherein the Receivers of the St. Louis & San Francisco Railroad Company were appointed by said Court.

That no notice of any of the proceedings or orders of said Court or of the action of the Receivers or any of their agents thereof have ever been served on the plaintiffs or any of them or their attorneys, and they have in no way participated in any of the proceedings in said cause wherein the Receivers were appointed or in any way became parties thereto.

That the Receivers though well knowing that the said order of the Interstate Commerce Commission was duly issued, served upon the St. Louis & San Francisco Railroad Company as provided by law, and when suit was filed thereon the agents of the Receivers at Kansas City, Mo., were served with original process in said cause wherein said judgment was rendered, and the attorneys for the St. Louis & San Francisco Railroad Company appeared in said cause and objected to said service upon said agent of the Receivers at Kansas City, said attorneys being at the same time attorneys for said Receivers, and appeared in said cause as attorneys of record and participated in the defense of the St. Louis & San Francisco Railroad Company in said cause and still are attorneys of record therein.

That the said indebtedness to plaintiffs aforesaid owing by the St. Louis & San Francisco Railroad Company, were not listed by the Receivers aforesaid as claims against or owing by the St. Louis & San Francisco Railroad Company and have not been paid, nor have *my* provisions been made for their payment by the said Receivers or order of

said Court, or by the St. Louis & San Francisco Railroad Company or St. Louis and San Francisco Railway Company aforesaid, or by the purchasing committee of said new organization or anyone else, of the said judgments or any part thereof or of the amounts ordered by the Interstate Commerce Commission to be paid aforesaid and as shown in the said order of the Interstate Commerce Commission.

[fol. 557] Therefore these plaintiffs as shown in said judgments claim that the purchaser of said property takes it subject to all the rights of said plaintiffs, and that their said rights for full payment thereof is a lawful charge against the said St. Louis & San Francisco Railway Company aforesaid, purchasers of the property and assets of the said St. Louis & San Francisco Railroad Company, if the sale be confirmed.

That as to said plaintiffs the sale of said property to the St. Louis & San Francisco Railway Company is fraudulent and void, and said plaintiffs in whose behalf said judgments have been rendered are entitled to have the property so sold and assets acquired or to be acquired by the purchaser, either the purchasing committee or the St. Louis & San Francisco Railway Company if it shall be the purchaser applied to the payment of said plaintiffs' debt by virtue of their rights as judgment creditors aforesaid.

— — —, Attorneys for E. B. Spiller and the other plaintiffs in whose behalf said judgments were rendered.

St. Louis Mo., August 29, 1916.

Exhibits A and B, attached to original are omitted here as said Exhibit "A" is identical with Exhibit "B" attached to the intervening petition of E. B. Spiller, heretofore set out; and Exhibit "B," attached to original as aforesaid, is identical with Exhibit "B" attached to the intervening petition of E. B. Spiller, et al.

Mr. Murphy: I will offer in evidence articles 9-10 and 14 of the final decree, with this understanding: that if there are other articles in the decree which either party may

consider pertinent and relevant, they may be inserted in the record.

Mr. Miller: I object to the offer in that form. I think the final decree should be offered in evidence, and then reference made to the particular articles which either party may desire to call attention to, but I wouldn't be willing to offer part of the final decree.

Mr. Murphy: We will offer in evidence Exhibit 20, which is the final decree in the case of the North American Company, Complainant, vs. the St. Louis and San Francisco Railroad Company, in Equity, No. 4174, Consolidated Cause Final, with the understanding that either party may put into the record such portions of it as may be deemed pertinent and relevant.

Said paper marked Exhibit 20, is in words and figures as follows, to-wit:

EXHIBIT 20, FINAL DECREE—Filed Aug. 15, 1923. Jas. J. O'Connor, Clerk

At a Term of the District Court of the United States for the Eastern Division of the Eastern District of Missouri, in the Eighth Judicial Circuit, in the City of St. Louis, on the 31st Day of March, 1916.

Present: Hon. Walter H. Sanborn, United States Circuit Judge.

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,  
Defendant

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,  
Defendant

No. 4290. In Equity

RAIL JOINT COMPANY, Complainant,  
against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,  
Defendant

No. 4304. In Equity

BANKERS TRUST COMPANY and NEILL A. McMILLAN, as  
Trustees, Complainants,  
against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,  
Defendant

No. 4334. In Equity

GUARANTY TRUST COMPANY OF NEW YORK, as Trustee, Com-  
plainant  
against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, BANKERS  
TRUST COMPANY, and NEILL A. McMILLAN, Defendants.

Consolidated Cause Final

Final Decree

This consolidated cause came on to be heard at this term on the bill of complainant of North American Company and the answer thereto of the defendant to said bill; on the bill of complaint of Rail Joint Company and the answer thereto of the defendant to said bill; on the bill of complaint and [fol. 559] the amended and supplemental bill of complaint of Bankers Trust Company and Neill A. McMillan, as trustees, and the answers thereto of the defendant to said bill and said amended and supplemental bill; on the bill of complaint and the amended and supplemental bill of complaint of Guaranty Trust Company of New York, as trustee, the answers thereto and cross bill of Bankers Trust Company and Neill A. McMillan, as trustees, and the answers of the

defendant Railroad Company to said bill of complaint and amended and supplemental bill, the reply of the complainant to said cross bill, and upon the proofs, and was argued by counsel, and thereupon, upon consideration thereof, the Court being fully advised in the premises, finds, adjudges and decrees as follows:

I. At all times mentioned in that behalf in the various pleadings in this consolidated cause and in the constituent causes, the defendant Railroad Company was, and it still is, a corporation organized and existing under the laws of the State of Missouri, and a citizen of said State of Missouri, having its office and principal place of business in the City of St. Louis in the State of Missouri, and a resident and inhabitant of the Eastern Division of the Eastern District of said State, and was and is duly authorized to borrow money for the corporate purposes set out in its Refunding Mortgage and its General Lien Mortgage hereinafter described and to secure the same by mortgage or deed of trust.

II. At all times mentioned in that behalf in the bill of complaint and in the amended and supplemental bill of complaint of Guaranty Trust Company of New York and until January 27, 1910, Morton Trust Company was a corporation duly organized and existing under the laws of the State of New York. Said Morton Trust Company was duly authorized and empowered to take the property transferred and conveyed to it and William H. Thompson as trustees, by the defendant Railroad Company under and by the Refunding Mortgage of said Railroad Company dated June 20, 1901, hereinafter described and in this decree termed the Refunding Mortgage, and to execute the trusts set forth and declared in the Refunding Mortgage.

On or about said January 27, 1910, Morton Trust Company pursuant to proceedings duly and regularly taken and had in compliance with the provisions of the statutes of the State of New York applicable thereto, became merged into [fol. 560] said Guaranty Trust Company of New York.

III. Said Guaranty Trust Company of New York is and was at all times mentioned in that behalf in the bill of complaint and in the amended and supplemental bill of com-

plaint of said Guaranty Trust Company of New York, as trustee, a corporation duly organized and existing under the laws of the State of New York, and a citizen of said State, and a resident and inhabitant of the Southern District of New York, and was and is duly authorized and empowered to take the property transferred and conveyed under and pursuant to the Refunding Mortgage, and to execute the trusts set forth and declared therein, and since said merger has been and is the lawful successor of said Morton Trust Company in the trusts declared by the Refunding Mortgage.

William H. Thompson at the time of the execution and delivery of the Refunding Mortgage, was a resident and citizen of the State of Missouri and remained continuously a resident and citizen of the State of Missouri until his death on or about December 6, 1905. From said last-mentioned date until January 27, 1910, said Morton Trust Company was the sole trustee under the Refunding Mortgage, and since January 27, 1910, said Guaranty Trust Company of New York has been the sole trustee under the Refunding Mortgage.

Bankers Trust Company is and was at all times since March 25, 1903, and at all times mentioned in that behalf in the bill of complaint and in the amended and supplemental bill of complaint of said Bankers Trust Company and Neill A. McMillan, as trustees, a corporation duly organized and existing under the laws of the State of New York, and a citizen of said State, and a resident and inhabitant of the Southern District of New York, and was and is duly authorized and empowered to take the property transferred and conveyed to it and Neill A. McMillan under and pursuant to the General Lien Mortgage of the defendant Railroad Company, dated August 27th, 1907 (hereinafter termed the General Lien Mortgage), and to execute the trust therein set forth and declared.

Neill A. McMillan at all times mentioned in that behalf in the bill of complaint and in the amended and supplemental bill of complaint of said Bankers Trust Company and said Neill A. McMillan, as trustees, was, and he now is, a resident of the City of St. Louis, in the State of Missouri, in the Eastern Division of the Eastern District of Missouri and a citizen of said State of Missouri.

[fol. 561] North American Company is and at all times mentioned in that behalf in its bill of complaint was a corporation duly organized and existing under the laws of the State of New Jersey, and a citizen of said State and a resident and inhabitant thereof.

Rail Joint Company is, and at all the times in that behalf mentioned in its bill of complaint was, a corporation duly organized and existing under the laws of the State of New York and a citizen of said State and a resident and inhabitant thereof.

IV. Heretofore and on or about the 20th day of June, 1901, the defendant Railroad Company, being thereunto duly authorized by law, desiring to borrow money for the purpose of funding certain of the indebtedness to which certain of its railroads, equipment and property were subject, and to provide for making additions to and extensions of its railroads and other property, and for the purpose of additional equipment and property, pursuant to due and lawful authority and to due corporate action on the part of its board or directors and of its stockholders, duly authorized the creation of its fifty (50) year Gold Bonds, to be known as its Refunding Mortgage Gold Bonds (in this decree termed Refunding Bonds), to be dated June 20th, 1901, to mature July 1st, 1951, and to bear interest at a rate not exceeding four per cent (4%) per annum, payable semi-annually on the first days of January and July in each year, the total authorized issue of Refunding Bonds to be limited to the aggregate principal sum of eighty-five million dollars (\$85,000,000) at any one time outstanding.

V. On or about said 20th day of June, 1901, the defendant Railroad Company, pursuant to due and lawful authority and due corporate action on the part of its board of directors and of its stockholders, and in order to secure the payment of the principal and interest of the Refunding Bonds when the same should become due and payable, and for the other purposes therein set forth, executed and delivered to said Morton Trust Company and William H. Thompson, as trustees, the Refunding Mortgage, and therein it granted, bargained, sold, released, conveyed and confirmed unto said trustees, their successors in the trust and their assigns forever the property therein described. Exhibit A to the

amended and supplemental bill of complaint of Guaranty Trust Company of New York, as trustee, is a true copy of the Refunding Mortgage. The Refunding Mortgage was executed and delivered in all respects in conformity with law, and the trustees therein named duly accepted the [fol. 562] trusts therein and thereby created. The Refunding Mortgage was thereafter duly recorded in accordance with and as required by law and in every office in which required by law to be so recorded and in every county in which the lines of railroad and other real property of the defendant Railroad Company covered by the Refunding Mortgage were or are situated or located.

VI. Of the Refunding Bonds, sixty-eight million, six hundred and sixty-six thousand dollars (\$68,666,000) face amount thereof, were duly executed by the defendant Railroad Company, and, as provided in the Refunding Mortgage, were duly authenticated by the endorsement thereon of the certificate of said Morton Trust Company, as trustee, or the certificate of said Guaranty Trust Company of New York, as trustee. Of the Refunding Bonds so authenticated, sixty-eight million five hundred and fifty-seven thousand dollars (\$68,557,000) face amount of Refunding Bonds bearing interest at the rate of four per cent (4%) per annum were duly issued, negotiated and sold and are in the hands of divers persons who are bona fide holders thereof as purchasers for value, and are outstanding, valid and subsisting obligations of the defendant Railroad Company in accordance with their terms. The remaining one hundred and nine thousand dollars (\$109,000) face amount of Refunding Bonds so authenticated, to-wit, 109 bonds for one thousand dollars each bearing the serial numbers 52867 to 52970, both inclusive, and 71585 to 71589, both inclusive, have not been issued, negotiated or sold and are not outstanding nor entitled for any purpose to the security of the Refunding Mortgage.

VII. Heretofore and on or about the 27th day of August, 1907, the defendant Railroad Company, being thereunto duly authorized by law, desiring to borrow money for the purpose of funding indebtedness to which certain of its railroads, equipment and property were subject, and to pro-

vide for making additions to, and extensions of, its railroads and other properties, and for the purchase of additional equipment and property and for other corporate purposes, pursuant to due and lawful authority and to due corporate action on the part of its board of directors and of its stockholders, duly authorized the creation of its General Lien 15-20 Year Gold Bonds (in this decree termed General Lien Bonds), to be payable May 1, 1927, in gold coin of the United States of America of the then present standard of weight and fineness, and to bear interest at such rate or rates not exceeding five per cent (5%) per annum, [fol. 563] as from time to time should be fixed and determined by the board of directors or executive committee of defendant Railroad Company and should be designated in the General Lien Bonds when issued, payable semi-annually on the first days of November and May in each year in like gold coin, the total authorized issue of General Lien Bonds to be limited to the aggregate principal sum of one hundred and fifteen million dollars (\$115,000,000) at any one time outstanding.

VIII. On or about said 27th day of August, 1907, the defendant Railroad Company, pursuant to due and lawful authority and to due corporate action on the part of its board of directors and its stockholders, and in order to secure the payment of the principal and interest of the General Lien Bonds when the same should become due and payable, and for the other purposes therein set forth, executed and delivered to said Bankers Trust Company and Neill A. McMillan, as trustees, its General Lien Mortgage, and therein it granted, bargained, sold, released, conveyed and confirmed unto said trustees, their successors in the trust and their assigns forever the property therein described. Exhibit A to the amended and supplemental bill of complaint of Bankers Trust Company and Neill A. McMillan, as trustees, is a true copy of the General Lien Mortgage. The General Lien Mortgage was executed and delivered in all respects in conformity with law, and the trustees therein named duly accepted the trusts therein and thereby created, and the General Lien Mortgage was thereafter duly recorded in accordance with and as required by law, and in every office in which required by law to be so recorded, and in every county and parish wherein any of the lines of rail-

way or real property subject to the General Lien Mortgage was or is situated, and in the office of the Secretary of the Interior of the United States.

IX. Thereafter and on or about the 31st day of December, 1908, the defendant Railroad Company and said Bankers Trust Company and Neill A. McMillan, as trustees under the General Lien Mortgage, entered into an agreement supplementary to the General Lien Mortgage, among other things prescribing that the authorized aggregate principal amount of General Lien Bonds should not exceed one hundred and nine million eight hundred and fifty thousand four hundred dollars (\$109,850,400) at any one time outstanding. Exhibit B to the amended and supplemental bill of complaint of the complainants Bankers Trust Company and Neill A. McMillan is a true copy of said agreement. Said agreement was duly recorded in accordance [fol. 564] with and as required by law, and in every office in which required by law to be so recorded and in which the General Lien Mortgage had been recorded, and in every county and parish wherein any of the lines of railway or real property subject to the General Lien Mortgage was or is situated and in the office of the Secretary of the Interior of the United States.

Thereafter said defendant Railroad Company and said Bankers Trust Company and Neill A. McMillan, as trustees under the General Lien Mortgage, duly entered into various agreements supplemental to the General Lien Mortgage. Exhibit C, Exhibit D, Exhibit E, Exhibit F, and Exhibit G to the amended and supplemental bill of complaint of said Bankers Trust Company and Neill A. McMillan are true copies of said agreements supplemental to the General Lien Mortgage. Said agreements supplemental to the General Lien Mortgage were duly made by the defendant Railroad Company in pursuance of lawful authority and of due corporate action. Said supplemental agreement, of which Exhibit C is a copy, upon the execution and delivery thereof, was promptly and duly recorded in the offices of the Records of Deeds for the City of St. Louis and the County of St. Louis, State of Missouri.

X. Of the General Lien Bonds, General Lien Bonds in the face amount of sixty-nine million five hundred and

twenty-four thousand dollars (\$69,524,000), bearing interest at the rate of five per cent. (5%) per annum, were duly executed by the defendant Railroad Company, and, as provided in the General Lien Mortgage, were duly authenticated by the endorsement thereon of the certificate of said Bankers Trust Company as trustee. Of the General Lien Bonds so authenticated, sixty-nine million, three hundred and eighty-four thousand dollars (\$69,384,000) thereof were duly issued, negotiated and sold, and are in the hands of divers persons who are bona fide holders thereof as purchasers for value, and are outstanding, valid and subsisting obligations of the defendant Railroad Company in accordance with their terms. The remaining one hundred and forty thousand dollars (\$140,000) face amount of General Lien Bonds so authenticated, to wit, 140 bonds for one thousand dollars each bearing the serial numbers 36,053 to 36,192, both inclusive, have not been issued, negotiated or sold, and are not outstanding nor entitled for any purpose to the security of the General Lien Mortgage.

XI. On or about June 1, 1911, the defendant Railroad Company issued its Two Year Five Per Cent. Secured Gold Notes maturing June 1, 1913, to the aggregate amount of [fol. 565] \$2,250,000 and to secure said Notes entered into a Collateral Trust Agreement of even date with Old Colony Trust Company, as trustee, under which there have been pledged the following securities, which are inadequate for the payment of said indebtedness:

(a) \$2,500,000 St. Louis and San Francisco Railroad Company Common Stock Trust Certificates, issued in respect of Chicago and Eastern Illinois Railroad Company's Common Stock;

(b) \$1,490,000, of The Kansas City, Fort Scott and Memphis Railway Company Guaranteed Four Per Cent. Preferred Stock Trust Certificates;

(c) \$100,000 General Lien Bonds of the defendant Railroad Company.

All said Notes are outstanding and unpaid and no interest has been paid thereon since December 1, 1912.

XII. On or about September 3, 1912, the defendant Railroad Company issued its Two Year Six Per Cent. Secured

Gold Notes maturing September 1, 1914, to the aggregate amount of \$2,600,000 and to secure said notes entered into a Trust Agreement of even date with The Equitable Trust Company of New York, as trustee under which there have been pledged the following securities, which are inadequate for the payment of said indebtedness:

(a) 20,000 shares of stock of New Orleans, Texas and Mexico Railroad Company;

(b) \$4,229,185.09 promissory notes of said last named Company and all other indebtedness of said last named Company to the defendant Railroad Company, except New Orleans, Texas and Mexico Division, First Mortgage Bonds;

(c) 14,000 shares preferred stock of the Kirby Lumber Company;

(d) 700 shares stock of the San Benito & Rio Grande Valley Railway Company;

(e) \$625,495 Six Per Cent. First Mortgage Bonds of said last named Company;

(f) All other indebtedness of said last named Company to the defendant Railroad Company.

[fol. 566] All said Notes are outstanding and unpaid and no interest has been paid thereon since March 1, 1913.

XIII. On, and for some time prior to May 27, 1913, the defendant Railroad Company was justly indebted to the complainant North American Company on the promissory note of the defendant Railroad Company in the principal sum of four hundred thousand dollars (\$400,000), and there was on said last named date due, owing and unpaid by the defendant Railroad Company on its said promissory note the principal thereof together with interest thereon at the rate of six per cent. (6%) per annum from May 21, 1913. No part thereof has been paid except the interest accrued thereon to February 10, 1916, and there is due thereon at the date of this decree the sum of \$400,000, together with interest thereon from February 10, 1916, at the rate of six per cent. (6%) per annum. Said note is secured by the pledge, on the terms thereof, of the following securities:

(a) \$8,000,000 Stock New Mexico and Arizona Land Company.

(b) \$5,000,000 First Mortgage Bonds New Mexico and Arizona Land Company.

(c) \$200,000 St. Louis and San Francisco Railroad Company, New Orleans, Texas and Mexico Division First Mortgage Bonds.

XIV. On and for some time prior to May 27, 1913, the defendant Railroad Company was justly indebted to the complainant Rail Joint Company for goods sold and delivered. On or about February 26, 1914, said complainant Rail Joint Company obtained against the defendant Railroad Company in this Court a judgment on account of said indebtedness for \$7,447.65 on which execution was on March 26, 1914, issued and returned unsatisfied. No part thereof has been paid and there is due thereon at the date of this decree the sum of seven thousand, four hundred forty-seven and 65/100 dollars (\$7,447.65) with interest thereon at the rate of six per cent. (6%) per annum.

XV. The defendant Railroad Company was, on said May 27th, 1913, indebted to divers other persons and corporations in divers amounts then past due; the defendant Railroad Company then was and ever since has been unable to meet its matured obligations; its assets were not at that time nor have they since been of sufficient value to realize sufficient to pay its liabilities as they matured and accrued, and the defendant Railroad Company was then and ever since has been insolvent.

[fol. 567] XVI. Thereupon and on or about said May 27th, 1913, the defendant Railroad Company being so indebted, said North American Company in behalf of itself and of the other creditors of the defendant Railroad Company filed its bill of complaint in this Court against the defendant Railroad Company alleging the insolvency of the defendant Railroad Company and praying for the administration of the entire property and assets of the defendant Railroad Company, for the enforcement of the rights, liens and equities of the creditors of the defendant Railroad Company, and for the appointment of receivers of the railroads and property of the defendant Railroad Company. There-

after the defendant Railroad Company duly filed its answer to said bill of complaint admitting its insolvency and all other material allegations of the bill of complaint. Such proceedings thereupon were had in said cause that this Court granted the prayer of said bill and duly appointed Receivers of all the franchises, liens, claims, rights, interest and property of every name and nature, either at law or in equity, and wherever situated, of the defendant Railroad Company and said Receivers so appointed, having duly qualified as Receivers as aforesaid, thereupon entered into possession of said property of which they had been so appointed receivers. Within ten days thereafter a duly certified copy of said bill of complaint and of said order were duly filed in the District Court of the United States for each district of the Eighth Circuit in which any portion of the property of the defendant Railroad Company then lay or was situated, and said property has ever since been in the custody of this Court through its receivers duly appointed, and was so in the custody of this Court through its receivers at the time of the filing in this Court of the bill of complaint and the amended and supplemental bill of complaint of said Bankers Trust Company and McMillan, the trustees of the General Lien Mortgage, and of the bill of complaint and of the amended and supplemental bill of complaint of said Guaranty Trust Company of New York, the surviving and sole acting trustee under the Refunding Mortgage. From time to time after said May 27, 1913, in actions of similar character instituted in the District Courts of the United States for the Northern District of Alabama, Southern Division, Northern District of Mississippi, Western Division, and Western District of Tennessee, Western Division, respectively, by said North American Company against the defendant Railroad Company, similar orders were made in each of the debt represented by the said promissory note of the proceedings have been had at law or in equity for the collection of the debt represented by the said promissory note of the defendant [fol. 568] Railroad Company held by the complainant North American Company.

XVII. The defendant Railroad Company made default in the payment of the installment of interest due May 1, 1914, upon all the General Lien Bonds issued and outstand-

ing; said default still continues, although demand was duly made at the place named in the General Lien Bonds and in the General Lien Mortgage for the payment of said installment of interest, and there remains due, owing and unpaid on said installment of interest the sum of one million seven hundred and thirty-four thousand six hundred dollars (\$1,734,600) with interest thereon from May 1, 1914, at the rate of five per cent. (5%) per annum.

XVIII. Thereupon and on or about the 22nd day of May, 1914, leave of this court having first been duly obtained, said Bankers Trust Company and Neill A. McMillan, as trustees, filed their bill in this Court against the defendant Railroad Company alleging the possession by this Court through its receivers of the mortgaged premises and paying for the administration of the trusts under the General Lien Mortgage and for the sale of the mortgaged premises. Prior to the filing of said bill of complaint, this Court had, on or about April 3, 1914, consolidated said cause wherein said North American Company was complainant with a cause then pending in this Court against the defendant Railroad Company wherein Rail Joint Company was complainant and wherein similar relief was sought and prayed. Such proceedings were thereafter had under said bill of complaint of said Bankers Trust Company and Neill A. McMillan, as trustees as aforesaid, that this Court, by order duly entered on or about the 24th day of June, 1914, consolidated the consolidated suit aforesaid and said suit of said Bankers Trust Company and Neill A. McMillan, as trustees, under the title North American Company, complainant, against St. Louis and San Francisco Railroad Company, defendant, and each and all appointments of the receivers in said consolidated cause, consolidated pursuant to said order of April 3, 1914, were adopted as appointments of receivers in said cause instituted by said Bankers Trust Company and McMillan, as trustees, and in the consolidated cause consolidated pursuant to said order of June 24, 1914. Within ten days thereafter a duly certified copy of said bill of complaint of said trustees and of said order were duly filed in the District Court of the United States for each District in the Eighth Circuit in which any portion of the property of the defendant Railroad Company then lay or was situated.

[fol. 569] From time to time thereafter actions of similar character against the defendant Railroad Company were instituted in the District Courts of the United States for the Northern District of Alabama, Southern Division; Northern District of Mississippi, Western Division, and Western District of Tennessee, Western Division, respectively.

XIX. The defendant Railroad Company made default in the payment of interest due November 1, 1914, upon all the General Lien Bonds issued and outstanding; said default still continues, although demand was duly made at the place named in the General Lien Bonds and in the General Lien Mortgage for the payment of said installments of interest, and there remains due, owing and unpaid on said installment of interest the sum of one million seven hundred and thirty-four thousand six hundred dollars (\$1,734,600) with interest thereon from November 1, 1914, at the rate of five per cent. (5%) per annum.

XX. Pursuant to the provisions of the General Lien Mortgage, and on or about the thirtieth day of November, 1914, said default in the payment of the interest on the General Lien Bonds which became due as aforesaid on May 1, 1914 having continued for upwards of six months, said Bankers Trust Company and Neill A. McMillan, the trustees under the General Lien Mortgage, by notice in writing duly given to the defendant Railroad Company duly declared the principal of all General Lien Bonds then outstanding to be due and payable immediately, and the same became due and immediately payable. No part of the principal of the General Lien Bonds has been paid, and the whole amount thereof is due, owing and unpaid by the defendant Railroad Company, with interest thereon from November 1, 1914, at the rate of five per cent (5%) per annum. Thereupon and on or about the 6th day of January, 1915, leave of this Court having first been duly obtained, said Bankers Trust Company and Neill A. McMillan, as trustees, filed their amended and supplemental bill of complaint against said defendant Railroad Company and North American Company, praying for the foreclosure of the General Lien Mortgage and for the sale of the mortgaged premises and filed a duly certified copy

of their said amended and supplemental bill of complaint in the District Courts of the United States for each district in the Eighth Circuit in which any portion of the property of the defendant Railroad Company lay or was situated. From time to time thereafter in said actions instituted by [fol. 570] said trustees against the defendant Railroad Company in the District Courts of the United States for the Northern District of Alabama, Southern Division; Northern District of Mississippi, Western Division, and Western District of Tennessee, Western Division, respectively, amended and supplemental bills of like character and praying similar relief were duly filed.

XXI. The amount due, payable and owing from the defendant Railroad Company at the date of this decree for principal and interest on the General Lien Bonds is as follows:

Installment of interest or coupons due May 1, 1914 .....	\$1,734,600 00
Interest thereon from May 1, 1914 to the date of this decree at the rate of five per cent (5%) per annum .....	166,232 50
Installment of interest or coupons due November 1, 1914 .....	1,734,600 00
Interest thereon from November 1, 1914, to the date of this decree at the rate of five per cent (5%) per annum .....	122,867 50
Principal .....	69,384,000 00
Interest on said principal amount from November 1, 1914 to date of this decree, at the rate of five per cent (5%) per annum .....	4,914,700 00
Total .....	<hr/> \$78,057,000 00

XXII. Except as aforesaid, no proceedings have been had at law or in equity for the collection of the debt secured by the General Lien Mortgage.

XXIII. The defendant Railroad Company made default in the payment of the installment of interest due July 1,

1914, upon all the Refunding Bonds issued and outstanding; said default still continues, although demand was duly made at the place named in the Refunding Bonds and in the Refunding Mortgage for the payment of said installment of interest, and there remains due, owing and unpaid on said installment of interest, the sum of one million three hundred and seventy-one thousand one hundred and forty dollars (\$1,371,140) with interest thereon from July 1, 1914, at the rate of four per cent. (4%) per annum.

XXIV. Thereupon and on or about the 9th day of July, 1914, leave of this Court having first been duly obtained, [fol. 571] said Guaranty Trust Company of New York, as trustee, filed its bill of complaint in this Court against said defendant Railroad Company, and said Bankers Trust Company and Neill A. McMillan, as trustees, alleging the possession by this Court through its receivers of the mortgaged premises and praying for the foreclosure of the Refunding Mortgage and for sale of the mortgaged premises.

XXV. Pursuant to the provisions of the Refunding Mortgage and on or about the seventh day of October, 1914, said default in the payment of interest having continued for upwards of three months, said Guaranty Trust Company of New York, trustee under the Refunding Mortgage, by notice in writing duly given to the defendant Railroad Company, duly declared the principal of all the Refunding Bonds then outstanding, to be due and payable immediately, and the same became due and immediately payable. No part of the principal of the Refunding Bonds has been paid, and the whole amount thereof is due, owing and unpaid by the defendant Railroad Company, with interest thereon from July 1, 1914, at the rate of four per cent. (4%) per annum.

Thereupon and on or about the 13th day of November, 1914, leave of this Court having first been duly obtained, said Guaranty Trust Company of New York, as trustee, filed its amended and supplemental bill of complaint in said suit instituted by it in this Court against the defendant Railroad Company and said Bankers Trust Company and Neill A. McMillan, as trustees, praying for the foreclosure of the Refunding Mortgage and for the sale of the mort-

gaged premises. Thereafter this Court by order duly entered on or about the 31st day of January, 1916, consolidated the consolidated cause consolidated pursuant to said order of June 24, 1914, and said suit of said Guaranty Trust Company of New York under the title North American Company, Complainant, against St. Louis and San Francisco Railroad Company and others, Defendants, In Equity No. 4174, Consolidated Cause, Final, and each and all appointments of receivers in said consolidated cause consolidated pursuant to said order of June 24, 1914, were adopted as appointments of receivers in said cause instituted by said Guaranty Trust Company of New York and in the consolidated cause consolidated pursuant to said order of January 31, 1916. Within ten days thereafter, a duly certified copy of said amended and supplemental bill of complaint and of said order of January 31, 1916, were duly filed in the District Court of the United States for each District [fol. 572] in the Eighth Circuit in which then lay or was situated any portion of the property of the defendant Railroad Company in which said Guaranty Trust Company of New York, as said trustee, had or claimed to have an interest under the Refunding Mortgage.

XXVI. The amount due, payable and owing from the defendant Railroad Company at the date of this decree for principal and interest on the Refunding Bonds is as follows:

Installment of interest or coupons due July 1, 1914 .....	\$1,371,140 00
Interest thereon from July 1, 1914, to the date of this decree at the rate of four per cent. (4%) per annum .....	95,979 74
Principal .....	68,557,000 00
Interest on said principal amount from July 1, 1914, to the date of this decree at the rate at four per cent. (4%) per annum .....	4,798,990 00
Total . . . . .	<hr/> \$74,823,109 74

XXVII. Except as aforesaid, no proceedings have been had at law or in equity for the collection of the debt secured by the Refunding Mortgage.

XXVIII. The lines of railroad of the Railroad Company, including leased lines and lines controlled through stock ownership and operated under operating contracts, form a complete railroad system, with appurtenant rolling stock, equipment and other property, real and personal, rights, privileges and franchises. The value of the property of the defendant Railroad Company is much greater as a whole than if dismembered and sold or disposed of in separate pieces or parcels and said property should, in order that the highest price therefor may be obtained, be offered for sale in such manner as to give the opportunity for the acquisition thereof as a whole.

XXIX. The Refunding Mortgage is a lien upon the property specified in Article Twenty-sixth of this decree and hereinafter directed to be sold. Said property is of greater value as an entirety than if separated into parcels, and in order that the highest price therefor may be obtained, said property should be offered for sale in such manner as to give opportunity for the acquisition thereof as a whole.

XXX. The General Lien Mortgage is a lien upon the property described in Article Twenty-seventh of this decree [fol. 573] and hereinafter directed to be sold. Said property subject to the lien of the General Lien Mortgage is of greater value as an entirety than if separated into parcels, and in order that the highest price therefor may be obtained, said property should be offered for sale in such manner as to give opportunity for the acquisition thereof as a whole.

XXXI. Said properties subject to the lien of either the Refunding Mortgage or the General Lien Mortgage should, in order that the highest price therefor may be obtained, be offered for sale in such manner as to give opportunity for the acquisition of said mortgaged properties as a whole.

XXXII. The property of the defendant Railroad Company not subject to the lien of the Refunding Mortgage or to the lien of the General Lien Mortgage and specified in

Article Twenty-Ninth should, in order that the highest price therefore may be obtained, be offered for sale in such manner as to give opportunity for the acquisition thereof as a whole.

XXXIII. This consolidated suit is, as is each of the suits that have been consolidated, together constituting this consolidated cause, a civil suit in the nature of a suit in equity, and the matter in dispute in said consolidated cause and, as well in each of the constituent causes, exceeds, exclusive of interest and costs, the sum of five thousand dollars (\$5,000).

It is, therefore, Ordered, Adjudged and Decreed as follows:

Article First. The defendant Railroad Company is insolvent; it is unable to meet its matured obligations and indebtedness; its assets are not of sufficient value to meet its liabilities as they mature and accrue; its property should be administered and the net proceeds thereof distributed among its creditors in accordance with their respective priorities and rights. All property of every character and description of the defendant Railroad Company, including in said property so ordered sold, all property of every kind and description acquired or held by the Receivers in this cause, shall be sold in the manner and subject to the provisions hereinafter in this decree set forth, and all the right, title, interest and equity of redemption of the defendant Railroad Company, its creditors and stockholders, and of all persons claiming under it or them, or any of them, and of all parties to this consolidated cause and to each and [fol. 574] every of the constituent causes and of all persons claiming under them or any of them, of, in and to said property, and every part and parcel thereof, shall be forever barred and foreclosed, subject, however, to the proviso of Article Eighteenth of this decree.

Article Second. The defendant St. Louis and San Francisco Railroad Company, or some one in its behalf, shall, within thirty days after the entry of this decree, pay or cause to be paid to Guaranty Trust Company of New York, as trustee, for the use and benefit of the holders of the outstanding Refunding Bonds, and of the coupons apper-

taining thereto which matured July 1, 1914, the sum of Seventy-four million, eight hundred and twenty-three thousand, one hundred and nine and 74/100 dollars (\$74,823,109.74) in gold coin of the United States of America, with interest thereon at the rate of six per cent. per annum from the date of the entry of this decree to the date of payment. Within the same time, the defendant St. Louis & San Francisco Railroad Company, or some one in its behalf shall pay or cause to be paid to Bankers Trust Company and Neill A. McMillan, as trustees, for the use and benefit of the holders of the outstanding General Lien Bonds and of the coupons appertaining thereto which matured May 1, 1914, and November 1, 1914, respectively, the sum of Seventy-eight million, fifty-seven thousand dollars (\$78,057,000) in gold coin of the United State of America, with interest thereon at the rate of six per cent. per annum, from the date of the entry of this decree to the date of payment.

If such payments or either of them shall be so made, any of the parties to this suit may apply to this Court for such further instructions and for such further order and decree as may be just and equitable.

Article Third. The sale directed by this decree shall be made without valuation, appraisement, redemption or extension, and shall be made by and under the direction of a Special Master to be appointed by this Court for that purpose and for the other purposes herein mentioned, and who is directed to make and conduct the said sale, and to execute a deed or deeds or other instrument or instruments of conveyance or assignment and transfer of the property sold to the purchaser or purchasers thereof, or his or their assigns, upon an order of this Court confirming such sale, and upon payment or settlement of the purchase price, or making provision therefor, as in this decree provided, or as may be permitted by any order or other decree made in this [fol. 575] cause. Said sale shall be made at the train dispatcher's office, near the point where the mortgaged lines of railroad cross the line of Chouteau Avenue in the City of St. Louis in the State of Missouri upon the property to be sold, on a day and at an hour to be fixed by the Special Master, or as the Court may order, and notice of the time and place and terms of sale describing briefly the property to be sold, and referring to this decree, shall be published at

least once a week for four successive weeks preceding the date of such sale, in a newspaper printed regularly issued, and having a general circulation, in the City of St. Louis, and State of Missouri, and in a newspaper published in the Borough of Manhattan, City of New York, State of New York.

The Special Master shall, at the joint request of the solicitors for the Guaranty Trust Company of New York, as trustee, and the solicitors for the Bankers Trust Company and Neill A. McMillan, as trustees, adjourn or postpone said sale, and may without further notice or advertisement proceed with the sale on any day to which the same may have been adjourned, and he may give such further notice of sale in addition to the notice herein provided, or of any adjournment, as may be jointly requested by the solicitors for the Guaranty Trust Company of New York, as trustee, and by the solicitors for the Bankers Trust Company and Neill A. McMillan, as trustees.

Any of said trustees or any holder of Refunding Bonds, or any holder of General Lien Bonds, or any creditor or any stockholder of the defendant Railroad Company, or any party to this consolidated cause or to any constituent cause may bid at the sale, and if a successful bidder may purchase in his its or their own right.

Article Fourth. The property directed to be sold by this decree, whether sold as an entirety or in parcels, shall, in so far as the lien of any of the following instruments covers any of said property, be sold subject to the lien of such instrument viz.:

(1) Mortgage or deed of trust, dated July 1, 1896, executed by St. Louis and San Francisco Railroad Company to The Mercantile Trust Company and Paschal P. Carr as Trustees, to secure Consolidated Mortgage Bonds of said St. Louis and San Francisco Railroad Company;

(2) Mortgage or deed of trust dated January 1, 1898, executed by St. Louis and San Francisco Railroad Company to Central Trust Company of New York as Trustee, [fol. 576] to secure Southwestern Division First Mortgage Bonds of said St. Louis and San Francisco Railroad Company;

(3) Mortgage or deed of trust, dated March 28, 1899, executed by St. Louis and San Francisco Railroad Company to Continental Trust Company of the City of New York as Trustee, to secure Central Division First Mortgage Bonds of said St. Louis and San Francisco Railroad Company;

(4) Mortgage or deed of trust, dated October 1, 1900, executed by St. Louis and San Francisco Railroad Company to Continental Trust Company of the City of New York as Trustee, to secure Northwestern Division First Mortgage Bonds of said St. Louis and San Francisco Railroad Company;

(5) Trust indenture, dated August 1, 1880, executed by St. Louis and San Francisco Railway Company to The United States Trust Company of New York as Trustee, to secure Trust Mortgage Six Per Cent Bonds of 1880 of said St. Louis and San Francisco Railway Company;

(6) Trust indenture, dated December 15, 1887, executed by St. Louis and San Francisco Railway Company to Union Trust Company of New York as Trustee, to secure Trust Mortgage Five Per Cent Bonds of 1887 of said St. Louis and San Francisco Railway Company;

(7) Mortgage or deed of trust, dated July 1, 1881, executed by St. Louis and San Francisco Railway Company to The United States Trust Company of New York as Trustee, to secure General Mortgage Five Per Cent Bonds and Six Per Cent Bonds of said St. Louis and San Francisco Railway Company;

(8) Mortgage or deed of trust, dated July 29, 1879, executed by St. Louis and San Francisco Railway Company to Charles L. Perkins and Jacob Seligman as Trustees, to secure Missouri and Western Division First Mortgage Bonds of said St. Louis and San Francisco Railway Company;

(9) Mortgage or deed of trust, dated September 1, 1879, executed by St. Louis, Wichita and Western Railway Company to Charles L. Perkins and Jacob Seligman, as Trustees, to secure First Mortgage Bonds of said St. Louis, Wichita and Western Railway Company;

(10) Mortgage or deed of trust dated October 1, 1903, executed by Ozark and Cherokee Central Railway Company [fol. 577] to Continental Trust Company of the City of New York as Trustee, to secure First Mortgage Bonds of said Ozark and Cherokee Central Railway Company;

(11) Mortgage or deed of trust, dated June 1, 1902, executed by Muskogee City Bridge Company to St. Louis Union Trust Company as Trustee, to secure First Mortgage Bonds of said Muskogee City Bridge Company;

(12) Mortgage or deed of trust, dated January 10, 1902, executed by St. Louis, Memphis and Southeastern Railroad Company to Old Colony Trust Company and John F. Shepley, as Trustees, to secure First Mortgage Bonds of said St. Louis, Memphis and Southeastern Railroad Company;

(13) Mortgage or deed of trust, dated October 1, 1894, executed by Pemiscot Railroad Company to Union Trust Company of St. Louis as Trustee, to secure First Mortgage Bonds of said Pemiscot Railroad Company;

(14) Mortgage or deed of trust dated April 19, 1897, executed by Kennett and Osceola Railroad Company to Union Trust Company of St. Louis as Trustee, to secure First Mortgage Bonds of said Kennett and Osceola Railroad Company;

(15) Mortgage or deed of trust, dated July 1, 1899, executed by Southern Missouri and Arkansas Railroad Company to Irving M. Dittenhoefer and Roderick E. Rombauer as Trustees, to secure First Mortgage Bonds of said Southern Missouri and Arkansas Railroad Company;

(16) Mortgage or deed of trust, dated June 12, 1899, executed by Chester, Perryville and Ste. Genevieve Railway Company to Lincoln Trust Company, as Trustee, to secure First Mortgage Bonds of said Chester, Perryville and Ste. Genevieve Railway Company;

(17) Agreement dated October 1, 1902, executed by Railway Construction and Improvement Company, Old Colony Trust Company and St. Louis and San Francisco Railroad Company to secure First Mortgage Bonds of Birmingham Belt Railroad Company;

(18) Trust agreement, dated September 3, 1912, executed by St Louis and San Francisco Railroad Company to The Equitable Trust Company of New York, as Trustee, to secure Two Year Secured Six Per Cent Gold Notes of said St Louis and San Francisco Railroad Company;

[fol. 578] (19) Trust agreement, dated June 1, 1911, executed by St. Louis and San Francisco Railroad Company to Old Colony Trust Company as Trustee, to secure Two Year Secured Five Per Cent Gold Notes of said St. Louis and San Francisco Railroad Company;

(20) Trust Agreement, dated February 27, 1907, executed by The Chicago, Rock Island and Pacific Railway Company and St. Louis and San Francisco Railroad Company to Mercantile Trust Company, as Trustee, to secure First Mortgage Gold Bonds of Rock Island-Frisco Terminal Railway Company;

(21) Equipment Trust Indenture, dated April 1, 1906, between Blair & Co., St. Louis and San Francisco Railroad Company and Bankers Trust Company as Trustee, to secure Equipment Gold Notes, Series G, of said St. Louis and San Francisco Railroad Company;

(22) Equipment Trust Indenture, dated November 1, 1906, between First Trust and Savings Bank, Chicago, Ill., and St. Louis Union Trust Company, St. Louis, Mo., Trustees, St. Louis and San Francisco Railroad Company, and American Car and Foundry Company, to secure Equipment Gold Notes, Series I, of said St. Louis and San Francisco Railroad Company;

(23) Equipment Trust Indenture, dated June 1, 1906, between The Pullman Company and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series J, of said St. Louis and San Francisco Railroad Company;

(24) Equipment Trust Indenture, dated October 27, 1906, between St. Louis Union Trust Company, St. Louis, Mo., Trustee, St. Louis and San Francisco Railroad Company, and American Car and Foundry Company, to secure Equipment Gold Notes, Series K, of said St. Louis and San Francisco Railroad Company;

(25) Equipment Trust Indenture, dated August 1, 1907, between St. Louis Union Trust Company, St. Louis, Mo., Trustee, St. Louis and San Francisco Railroad Company, and American Car and Foundry Company, to secure Equipment Gold Notes, Series L, of said St. Louis and San Francisco Railroad Company;

(26) Equipment Trust Indenture, dated August 1, 1907, between The Pullman Company and St. Louis and San [fol. 579] Francisco Railroad Company, to secure Equipment Gold Notes, Series M, of said St. Louis and San Francisco Railroad Company;

(27) Equipment Trust Indenture, dated July 1, 1909, between Central Trust Company of New York, Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series N, of said St. Louis and San Francisco Railroad Company;

(28) Equipment Trust Indenture, dated January 11, 1908, between The Provident Life and Trust Company of Philadelphia, Pa., Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Certificates, Series O, of said St. Louis and San Francisco Railroad Company;

(29) Equipment Trust Indenture, dated October 1, 1909, between Bankers Trust Company, Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series P, of said St. Louis and San Francisco Railroad Company;

(30) Equipment Trust Indenture, dated August 1, 1910, between Central Trust Company of New York, Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series Q, of said St. Louis and San Francisco Railroad Company;

(31) Equipment Trust Indenture, dated December 1, 1910, between United States Express Company, Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series R, of said St. Louis and San Francisco Railroad Company;

(32) Equipment Trust Indenture, dated October 1, 1911, between Guaranty Trust Company of New York, Trustee,

and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series S, of said St. Louis and San Francisco Railroad Company;

(33) Equipment Trust Indenture, dated September 2, 1912, between Columbia-Knickerbocker Trust Company, Trustee, and Crystal Construction Company, to secure Equipment Gold Notes, Series A, of said Frisco Construction Company;

(34) Equipment Trust Indenture, dated September 16, 1912, between The New York Trust Company, Trustee, and Frisco Construction Company, to secure Equipment Gold Notes, Series B, of said Frisco Construction Company

[fol. 580] Article Fifth. The sale directed by this decree shall be made in the manner hereinafter in this Article prescribed.

The Special Master, unless the property embraced in the Trust Agreement of June 1, 1911, securing the Two Year Five Per Cent. Secured Gold Notes of the defendant Railroad Company shall previously have been sold in enforcement of said Trust Agreement, shall first offer said property for sale, separately and as an entirety, but subject to said Trust Agreement. The Special Master shall accept the highest and best bid received therefor and shall knock down said property to such bidder subject to confirmation of the sale by the Court.

The Special Master, unless the property embraced in the Trust Agreement of September 3, 1912, securing the Two Year Six Per Cent Secured Gold Notes of the defendant Railroad Company shall previously have been sold in enforcement of said Trust Agreement, shall next offer said property for sale, separately and as an entirety, but subject to said Trust Agreement. The Special Master shall accept the highest and best bid received therefor and shall knock down said property to such bidder subject to confirmation of the sale by the Court.

The Special Master shall next offer for sale, separately and as an entirety, the securities pledged to secure the promissory note of the defendant Railroad Company held by the complainant North American Company. The Special Master shall accept the highest and best bid received therefor and shall knock down said property to such bidder subject to confirmation of the sale by the Court.

The Special Master shall then offer for sale the remaining property of the defendant Railroad Company in the following manner, and all bids for any parcel or sub-parcel in which the same may be so offered shall be received and noted only on condition that the same may subsequently be offered as in this Article hereinafter provided:

(a) The Special Master shall offer for sale, separately and as an entirety, all other property of the defendant Railroad Company not by this decree adjudged to be subject to the lien of either the Refunding Mortgage or the General Lien Mortgage, to wit, the property described in Article Twenty-ninth of this decree, and shall note the highest bid therefor.

(b) The Special Master shall then offer for sale all the property by this decree adjudged to be embraced in either [fol. 581] the Refunding Mortgage or the General Lien Mortgage and described in Article Twenty-sixth and Article Twenty-seventh of this decree. Of said property he shall first offer for sale, separately and as an entirety, the property by this decree adjudged to be embraced in the Refunding Mortgage, to wit, the property described in Article Twenty-sixth of this decree, and shall note the highest bid therefor. He shall next offer for sale, separately and as an entirety, the property by this decree adjudged to be embraced in the General Lien Mortgage, other than the property by this decree adjudged to be embraced in the Refunding Mortgage, and shall note the highest bid therefor. He shall next offer for sale, separately and as an entirety, all said property by this decree adjudged to be embraced in either the Refunding Mortgage or the General Lien Mortgage and shall note the highest bid therefor. If the highest bid received for all said property when offered for sale as an entirety shall equal or exceed the aggregate of the several highest bids therefor when offered for sale in said two sub-parcels then the Special Master shall cancel the bids noted for such sub-parcels and note only the highest bid for said property as an entirety. If, however, the highest bid received and noted for said property as an entirety shall be less than the aggregate amount of the several highest bids for said property when offered in said two sub-parcels then the Special Master shall cancel the bid noted for said property as an entirety and shall note only the highest bids for

said several respective sub-parcels. In the event that the highest bid for said property as an entirety shall equal or exceed the aggregate of the highest bids for said two sub-parcels, the purchase price and proceeds of sale of each of the two sub-parcels in which the same shall have been offered shall for the purposes of distribution and otherwise under this decree be deemed to be such proportion of the highest bid for said property as an entirety or apportionable to such property if sold with other property of the defendant Railroad Company as an entirety, as the highest bid for such sub-parcel shall bear to the aggregate of the several highest bids for said two sub-parcels when offered separately.

(c) The Special Master finally shall separately offer for sale as an entirety the property of the defendant Railroad Company specified in Article Twenty-sixth, Article Twenty-seventh and Article Twenty-ninth of this decree and shall note the highest bid therefor.

[fol. 582] If the highest bid received for said property of the Railroad Company when so offered for sale as an entirety shall equal or exceed the aggregate of the several highest bids therefor when offered for sale in parcels, as in subdivision (a) and subdivision (b) of this Article provided, then all said property shall be stricken off and sold as an entirety to the highest bidder therefor. If, however, the highest bid received and noted for said property as an entirety shall be less than the aggregate amount of the several highest bids for said property when offered in parcels as in subdivision (a) and subdivision (b) of this Article provided, then the several parcels offered for sale shall be stricken off and sold to the highest bidders for said respective parcels. In the event of the sale as an entirety of said property the purchase price and proceeds of sale of each of said several parcels shall for the purposes of distribution and otherwise under this decree be deemed to be such proportion of the highest bid for the property as an entirety as the highest bid for such parcel when offered for sale as a separate parcel shall bear to the aggregate of the several highest bids for said several parcels when offered for sale separately.

Article Sixth. In making the sale directed by this decree, the Special Master shall accept no bid from any one offering

to bid who shall not prior to any offering by the Special Master for sale under this decree deposit with the Special Master and deliver to him as a pledge that he will make good his bid in the event of its acceptance:

A. In case of the property pledged to the complainant North American Company, the sum of \$100,000, in cash or certified check on some national bank or trust company in the City of New York or in the City of St. Louis acceptable to the Special Master and made or endorsed payable to his order; or said promissory note endorsed to the order of the Special Master or assigned to him.

B. In case of the property embraced in the Refunding Mortgage, the sum of \$500,000 in cash or certified check on some national bank or trust company in the City of New York or in the City of St. Louis acceptable to the Special Master, and made or endorsed payable to his order, or \$1,500,000 face amount of Refunding Bonds in bearer form, and if coupon bonds accompanied by the coupon of July 1, 1914, and all subsequent coupons; such deposit may be partly in cash or certified check and partly in Refunding Bonds, but in the same relative proportions.

[fol. 583] C. In case of the property embraced in the General Lien Mortgage other than property embraced in the Refunding Mortgage, the sum of \$400,000 in cash or certified check as aforesaid, or \$1,200,000 face amount of General Lien Bonds in bearer form, and if coupon bonds, accompanied by the coupon of May 1, 1914, and all subsequent coupons; such deposit may be partly in cash or certified check and partly in General Lien Bonds but in the same relative proportions;

D. In case of all the property embraced in either the Refunding Mortgage or the General Lien Mortgage as an entirety, the sum of \$900,000 in cash or certified check as aforesaid, or the aggregate of bonds of the character and to the amount as would be required under the foregoing clauses B and C in order to qualify such persons to bid for said property when offered for sale in said parcels;

E. In case of the property of the defendant Railroad Company not by this decree adjudged to be subject to the lien of either the Refunding Mortgage or the General Lien

Mortgage, and specified in Article Twenty-Ninth, the sum of \$150,000 in cash or by certified check, as aforesaid, or \$1,500,000 face amount of claims against the defendant Railroad Company, heretofore presented and filed in this consolidated cause in accordance with orders heretofore made, and admitted or allowed by the Special Master to whom the same was referred, accompanied by proper and appropriate assignments thereof transferring the same to the Special Master appointed in and by this decree; such deposit may be partly in cash or certified check and partly in such claims accompanied by such assignments, but in the same relative proportions;

F. In case, as an entirety, of the property of the defendant Railroad Company specified in Article Twenty-sixth, Article Twenty-Seventh and Article Twenty-ninth, the aggregate of such sums in cash or by certified check as aforesaid or the aggregate of bonds of the character and to the amounts and claims, with assignments, to the amounts as would be required under the foregoing clauses D and E in order to qualify such person to bid for said property when offered in said parcels.

No deposit shall be required to qualify any one to bid for the properties subject to the Trust Agreement of June 1, 1911, or the properties subject to the Trust Agreement of September 3, 1912.

In lieu of the deposit of bonds and coupons in accordance with the requirements of any of the foregoing clauses [fol. 584] B, C, D, E and F, the Special Master may accept the certificate of any national bank or trust company in the City of New York or the City of St. Louis acceptable to the Special Master that it holds subject to the order of the Special Master bonds of the required character in bearer form and, if in coupon form, accompanied by the required coupons. A deposit made by any bidder for a separate parcel or sub-parcel may, so far as applicable, be applied on account of the deposit required to be made in order to qualify him to bid for the same property when offered for sale with other property as an entirety.

Any deposit so received from an unsuccessful bidder shall be returned to him when the property shall be struck down. The deposit received from the successful bidder

or bidders shall be applied on account of the purchase price of the property.

The Special Master shall not accept any bid less than

(a) for the property pledged to the complainant North American Trust Company, the sum of \$600,000;

(b) for the property embraced in the Refunding Mortgage, the sum of \$25,000,000;

(c) for the property embraced in the General Lien Mortgage other than property embraced in the Refunding Mortgage, the sum of \$20,000,000;

(d) for all the property embraced in either the Refunding Mortgage or the General Lien Mortgage as an entirety, the sum of \$45,000,000;

(e) for the property of the defendant Railroad Company specified in Article Twenty-ninth, the sum of \$700,000;

(f) for the property, as an entirety, of the defendant Railroad Company specified in Article Twenty-sixth, Article Twenty-seventh and Article Twenty-ninth, the sum of \$45,700,000;

and if such respective sums shall not be bid for any of said parcels nor said sum for the property, as an entirety, of the defendant Railroad Company specified in Article Twenty-sixth, Article Twenty-seventh and Article Twenty-ninth, the Special Master shall adjourn the sale of such parcel or parcels for which the required amount shall not be bidden and shall apply to the Court for further instructions in respect thereof.

[fol. 585] Article Seventh. In case any bidder upon the acceptance of his bid by the Special Master shall fail to comply, within the period of twenty days after the entry thereof, with any order of this Court requiring or relating to the payment of the balance of the purchase price, then the moneys or bonds or claims deposited by such accepted bidder, as hereinbefore provided, shall be forfeited as a penalty for such failure, and shall be applied to the payment of the expenses of a resale and toward making good any deficiency or loss in case the property in respect of payment of the purchase price of which such accepted bid-

der shall make default, shall be sold at a less price on such resale, and to such other purposes as this Court may direct.

If this Court shall not confirm any sale, the deposit made by the accepted bidder at such sale shall be forthwith returned to such bidder.

Article Eighth. The purchaser upon confirmation of the sale shall make such further payment or payments in cash on account of the purchase price as this Court may from time to time direct. So much of the purchase price as may not be required by the Court to be paid in cash may either be paid in cash or the purchaser may satisfy and make good the residue of his bid in whole or in part by turning over to the Special Master to be cancelled or credited, as hereinafter provided, the bonds and coupons to be paid out of the proceeds of sale on distribution thereof as hereinafter set forth, and claims against the defendant Railroad Company allowed and established in this cause and to be so paid. Said bonds and coupons shall be in bearer form or accompanied by proper transfers to the Special Master, and said claims shall be accompanied by proper assignments thereof to the Special Master.

In lieu of turning over to the Special Master bonds and coupons, the Special Master may accept the certificates of any national bank or trust company in the City of New York or the City of St. Louis acceptable to the Special Master that it holds subject to his order bonds of the amount and character therein specified and, if in bearer form, accompanied by the coupons therein stated.

A purchaser shall be credited on account of the purchase price of the property by him purchased, for all bonds and coupons and for all such allowed and established claims so turned over to the Special Master in part payment of the purchase price, such sums as would be payable in respect to such bonds, coupons and claims out of the proceeds of [fol. 586] the sale if the whole amount of the purchase price were paid in cash. The Court reserves the right to resell, upon such notice as the Court may direct, property sold to any purchaser in case such purchaser shall fail or omit to make any payment on account of the unpaid balance of the purchase price within thirty days after the entry of the order requiring such payment. All sums of money and all bonds and coupons or certificates of deposit thereof and all

assignments of claims, received by the Special Master shall forthwith be deposited by the Special Master with The State National Bank of St. Louis, subject to the order of this Court.

A purchaser shall not be required to pay the amounts payable in cash, out of the proceeds of the sale to such purchaser, to holders of Refunding Bonds and the appurtenant coupon of July 1, 1914, or to holders of General Lien Bonds and the appurtenant coupons of May 1, 1914, and November 1, 1914, until ten days after this Court shall on application of the owner of any of said bonds or coupons enter its order or decree directing the payment in accordance with such order of the cash distributive share of the proceeds of any sale to which the bonds and coupons or any of them in respect of which their owner shall make application as aforesaid shall be entitled. Until a purchaser, his successors or assigns shall have paid in cash the distributive share in the proceeds of the sale to such purchaser to which any such bonds or coupons shall be entitled, either directly or in accordance with some order of this Court or into court, this Court reserves a paramount lien and charge upon the property sold to such purchaser, and every part and parcel thereof, for the payment into this Court in cash of any unpaid part or portion of the purchase price; and in case the purchaser, his successors or assigns, shall for twenty days have made default in complying with the directions of any order for such payment made by this Court upon the application of the owner of any such bonds or coupons, then this Court may retake and may resell the property sold to the purchaser who or whose successors or assigns shall so have made default, and at his or their cost and risk.

Neither any purchaser nor the successors or assigns of any purchaser shall be required to see to the application of the purchase money. The fact of purchase and the acceptance of a deed or deeds by a purchaser shall not be construed as an election to accept any contract, agreement or lease sold as part of the property offered pursuant to this decree or embraced in any deed.

[fol. 587] Article Ninth. The purchaser or purchasers of any property described in Article Twenty-sixth or Article Twenty-seventh of this decree, and his and their succes-

sors and assigns, shall, as part of the consideration for and of the purchase price of the property purchased, and in addition to the sums bid by them and elsewhere in this decree required to be paid by him or them, take such property and receive the deeds or other instruments of conveyance and transfer thereof upon the express condition that he and they, or his and their successors or assigns, shall pay, satisfy and discharge:

(A) Any unpaid compensation which has been or shall be allowed to the Special Master heretofore appointed in this cause, or in any of the constituent causes, any unpaid compensation that has been or shall be allowed to the Receivers in this cause, or their solicitors, and also any unpaid indebtedness and liabilities of the Receivers incurred in this cause, or in any of the constituent causes, in the management or operation of the property purchased and otherwise in the discharge of their duties as such Receivers between May 27, 1913, the date of their appointment, and the date of the delivery by the Receivers of possession of the property sold:

(B) Any unpaid claims of creditors of the defendant Railroad Company which have been or shall be admitted by the parties in interest or adjudged by this Court to be prior in lien or superior in equity to the Refunding Mortgage or to the General Lien Mortgage:

(C) All just and legal indebtedness of the defendant Railroad Company, payment of which was authorized by the order of this Court appointing the Receivers in this cause or in any constituent cause, and which shall not at the time of delivery by the Receivers of possession of the property sold have been paid or satisfied;

to the extent that they have not been paid or shall not have been paid out of moneys in possession of the Receivers. Any surplus of said moneys remaining after payment of all the claims mentioned in the foregoing subdivisions (A), (B) and (C) shall be paid by the Receivers to the purchasers, or their assigns, or on the order thereof. In case, however, such property shall be sold in parcels, the purchaser of the property embraced in the Refunding Mortgage shall not be required to make payment of any indebted-

ness or liability contracted or incurred by the defendant Railroad Company prior to May 27, 1913, the date of the appointment of the Receivers unless such claim shall be adjudicated by this Court to be prior in lien or superior in equity to the Refunding Mortgage and the purchaser of [fol. 588] the property embraced in the General Lien Mortgage and not subject to the Refunding Mortgage shall not be required to make payment of any indebtedness or liability contracted or incurred by the defendant Railroad Company prior to the appointment of the Receivers as aforesaid unless such claim shall be adjudicated by this Court to be prior in lien or superior in equity to the General Lien Mortgage, and as between said parcels this Court will apportion liabilities to which both may be subject and charge against the proceeds of sale of the respective parcels their proper proportion of such liabilities.

The parties to receive and pay, and the amounts to be paid and received, under this Article Ninth, unless agreed upon by the parties in interest, shall be fixed and adjudged by this Court and this Court reserves the right and retains the power and jurisdiction so to do, and the right, power and jurisdiction to take back and resell any property that shall be sold under this decree in case the purchaser or purchasers, or his or their successors, shall fail to pay any of the claims mentioned in this Article Ninth when by this Court required, and in case of failure to pay any other part of the purchase price of the property sold under this decree, within twenty days after service of an order of this Court requiring such payment, or if an appeal be taken from any such order, within twenty days after service of written notice of final confirmation of such order upon appeal.

In the event that any purchaser or his successors or assigns, after demand made, shall refuse to pay any of the above-mentioned indebtedness or liabilities which under the foregoing provisions of this Article Ninth he is or may be required to pay, the person holding the claim therefor, upon twenty days' notice to such purchaser, his successors or assigns, may file a petition in this Court to have such claim enforced against the property sold to such purchaser, in accordance with the usual practice of this Court in rela-

tion to payments of a similar character; and such purchaser, his successors or assigns, shall have the right to appear and make defense to any claim, debt or demand or the priority thereof so sought to be enforced, and shall have the right to appeal from any judgment, decree or order made thereon.

Article Tenth. The Receivers shall, not more than twenty nor less than ten days prior to the date fixed for the sale under this decree of the property herein directed to be sold, file with the Clerk of this Court a statement or statements, showing as definitely as practicable,

[fol. 589] (a) All indebtedness, obligations and liabilities contracted or incurred by the Receivers then remaining unpaid;

(b) All unpaid indebtedness and liabilities contracted or incurred by the defendant Railroad Company prior to the appointment of the Receivers in the operation of the property directed by this decree to be sold, and which so far as they are informed are claimed to be prior in lien or superior in equity to the Refunding Mortgage;

(c) All unpaid indebtedness and liabilities contracted or incurred by the defendant Railroad Company prior to the appointment of the Receivers in the operation of the property directed by this decree to be sold, and which, so far as they are informed, are claimed to be prior in lien or superior in equity to the General Lien Mortgage but subsequent in lien or inferior in equity to the Refunding Mortgage.

(d) All outstanding contracts and leases (including all traffic, trackage, terminal crossing, operating and other executory contracts other than as may be specified in the General Lien Mortgage) to which the defendant Railroad Company or the Receivers may be parties, stating in the case of contracts or leases to which the defendant Railroad Company is a party whether such contracts or leases have been assumed or adopted or disaffirmed by the Receivers and to which of the lines of railroad described in Article Twenty-sixth and Article Twenty-seventh of this decree such contracts and leases are appurtenant.

(e) All claims and demands against the defendant Railroad Company which have been filed in this cause pursuant to the orders heretofore entered herein, save such as may have been paid and discharged in full.

Said statements and each of them shall be advisory only, and nothing therein contained shall be binding upon any purchaser at said sale, his successors or assigns, nor shall such statements constitute ground for release from any debt because of any representation therein or omission therefrom.

Notice having been given for the presentation in this cause of claims and demands against the defendant Railroad Company of every character and description whatsoever, and the time for the presentation of said claims having expired, no such claim or demand which has not been presented in this cause in accordance with the orders heretofore made requiring presentation thereof other than

[fol. 590] (1) any deficiency judgment which may be obtained by Guaranty Trust Company of New York as Trustee in respect of the Refunding Bonds, and by Bankers Trust Company and Neill A. McMillan, as trustees, in respect of the General Lien Bonds or by holders of Refunding Bonds, or of General Lien Bonds;

(2) any claim or demand which may arise after the entry of this decree,

shall be enforceable against the Receivers or against the property sold, or any part or portion thereof, or against any purchaser of the same or any part thereof, his successors or assigns, nor, other than as aforesaid, shall the holder of any claim or demand not so presented be entitled to the benefits of Article Ninth of this decree nor to any right whatsoever under Article Ninth, nor other than as aforesaid, shall any claim or demand not so presented be entitled to share in the distribution of any of the proceeds of sale under this decree.

Article Eleventh. Any purchaser of the property specified in Article Twenty-sixth or Article Twenty-seventh, or of any parcel thereof, his successors and assigns, shall have the right to enter his appearance in this consolidated

cause and in the appropriate separate causes heretofore consolidated into this cause and he or they or any of the parties to this consolidated cause or to the said appropriate separate causes shall have the right to contest any claim, demand or allowance existing at the time of the sale and then undetermined, and any claim or demand which thereafter may arise or be presented which shall be payable by any such purchaser, his or their successors or assigns, or which shall be chargeable against the property sold to such purchaser in addition to the amount bid at the sale, and he or they may appeal from any decision relating to any such claim, demand or allowance.

Article Twelfth. Any purchaser of the property specified in Article Twenty-sixth or Article Twenty-seventh, or of any parcel thereof, and the successors or assigns of such purchaser, shall have the right for a period of six months after the delivery of the deed or other instruments of conveyance by the Special Master of the property purchaser by him to elect whether or not to assume or adopt any lease or contract made by the defendant Railroad Company or by the Receivers, as part of the property embraced in such deed or instruments of conveyance, except the lease [fol. 591] and supplement thereto referred to in Order 66 of this cause, and, except as aforesaid, such purchaser or purchasers, his or their successors or assigns, shall be held not to have adopted or assumed any lease or contract in respect of which he or they shall not have filed written election to assume or adopt the same with the Clerk of this Court within said period of six months, or within such additional period as this Court may hereafter by its order or decree permit.

Article Thirteenth. Any purchaser of the property specified in Article Twenty-sixth or Article Twenty-seventh, or of any parcel thereof, and the successors or assigns of such purchasers, shall have the right to elect not to take or accept any part of the property so sold to such purchaser, by written notice of his election to the Special Master given at any time prior to the execution and delivery of the deed or other instruments of conveyance from the Special Master. No such election by a purchaser, his successors or as-

signs, shall diminish or affect the purchase price to be paid by such purchaser. The deed or instruments of conveyance to be given by the Special Master, the defendant Railroad Company, and the Guaranty Trust Company of New York, as trustee, and Bankers Trust Company and Neill A. McMillan, as trustees, as herein provided, shall expressly exempt therefrom any and all property which such purchaser, his successors or assigns, shall so elect not to take or accept.

Article Fourteenth. The proceeds of the sale of the securities pledged to the complainant North American Company shall be applied so far as may be requisite to the payment of the unpaid principal and interest of said note owned by it. Any excess and all other amounts arising from the sale of the property by this decree directed to be sold shall be first applied to the payment of the cost of this cause and the proper expenses attendant upon the sale, including the compensation of the Special Master appointed to make the sale, and of all allowances and disbursements of the complainant, the North American Company and its solicitors and counsel, and all expenses incurred by the Receivers in the discharge of their duties after the delivery by them of possession of the property sold, and for the purposes of determining distribution under this decree said amounts shall be apportioned and charged against the proceeds of the sale of the respective parcels in proportion to the purchase prices of such parcels.

[fol. 592] A. The net proceeds of sale of the properties embraced in the Refunding Mortgage, together with any moneys which may be in the hands of the trustee under the Refunding Mortgage, shall be applied as follows:

(1) To the payment of the costs and all charges, compensation, allowances and disbursements of Guaranty Trust Company of New York, as trustee under the Refunding Mortgage, and its solicitors and counsel.

(2) Thereafter to the payment of the amount found by this decree to be due for principal and interest upon the Refunding Bonds and the coupons of July 1, 1914, thereunto appertaining, together with interest thereon from the date of this decree to the date fixed for the payment thereof,

at the rate of six per cent, per annum. If the funds applicable to such payment shall not be sufficient to pay in full the amount so due on the outstanding Refunding Bonds and coupons, for principal and interest, with interest thereon from the date of this decree to the date fixed for the payment thereof at the rate of six per cent per annum, then said funds applicable for the purpose shall be distributed among the holders of the Refunding Bonds and the coupons of July 1, 1914, thereunto appertaining, ratably to the aggregate amount of such unpaid principal and interest, without preference or priority of principal over interest or of interest over principal, except that no coupons, the time for the payment whereof shall have been extended, shall be entitled to share in said fund except after the prior payment in full of the amount found due for principal of all said Refunding Bonds, with interest thereon as aforesaid, and of the amount found due for the said coupons, not so extended with interest thereon as aforesaid;

(3) Any residue shall be dealt with as the Court may direct.

B. The net proceeds of sale of the property embraced in the General Lien Mortgage (other than by this decree adjudged to be subject to the Refunding Mortgage), together with any moneys which may be in the hands of the trustees under the General Lien Mortgage shall be applied as follows:

(1) To the payment of the costs and all charges, compensation, allowances and disbursements of Bankers Trust Company and Neill A. McMillan, as trustees under the General Lien Mortgage, and their solicitors and counsel.

[fol. 593] (2) Thereafter to the payment of the amount found by this decree to be due for principal and interest upon the General Lien Bonds and the coupons of May 1, 1914, and November 1, 1914, thereunto appertaining, together with interest thereon from the date of this decree to the date fixed for the payment thereof at the rate of six per cent per annum. If the funds applicable to such payment shall not be sufficient to pay in full the amount so due on the outstanding General Lien Bonds and coupons for principal and interest, with interest thereon from the date

of this decree to the date fixed for the payment thereof at the rate of six per cent per annum, then said funds applicable for the purpose shall be distributed among the holders of the General Lien Bonds and coupons of May 1, 1914, and November 1, 1914, thereunto appertaining, ratably to the aggregate amount of such unpaid principal and interest, without preference or priority of principal over interest or of interest over principal, except that

(a) no coupon, the time for the payment whereof shall be extended, and

(b) no coupon which in any way at or after maturity shall have been transferred or pledged separate and apart from the bond to which it relates, unless accomplished by such bond,

shall be entitled to share in said funds except after the prior payment in full of the amount found due for principal of all said General Lien Bonds, with interest thereon as aforesaid, and of the amount found due for said coupons, with interest thereon as aforesaid, other than coupons so extended, and other than coupons so transferred or so pledged, and not accompanied by the bond to which they relate.

(3) Any residue shall be dealt with as the Court may direct.

C. The net proceeds of the sale of other property of the defendant Railroad Company, so far as not directed otherwise to be applied, shall be applied as follows:

(1) To the payment (a) of the claims and demands against the defendant Railroad Company which pursuant to orders of this Court have heretofore been presented in this consolidated cause or in any constituent cause and which have been allowed and established or may be allowed and established as claims against the defendant Railroad Company and (b) the deficiency judgments, if any, which may be obtained by said Guaranty Trust Company of New [fol. 594] York, as trustee, or other trustee or trustee of the Refunding Mortgage in respect of the Refunding Bonds, and by Bankers Trust Company and Neill A. McMillan, as trustees, or other trustees of the General Lien Mortgage in

respect of the General Lien Bonds or by holders of Refunding Bonds or of General Lien Bonds, and (c) of any claims and demands which may arise after the entry of this decree and be allowed and established as claims against the defendant Railroad Company. Such payments shall be made ratably and proportionately among the persons whose claims or demands shall have been so presented and allowed or shall hereafter pursuant to the provisions of this decree be allowed, and to the Trustee of the Refunding Mortgage and to the Trustee of the General Lien Mortgage or bondholders obtaining deficiency judgments; subject, however, to the right of this Court hereafter, upon the application of the holder of any such claim or demand or deficiency judgment claiming a preference in law or in equity, to determine and to pass upon such preference in payment out of the fund, and in case such preference is allowed, to direct the payment of such claim or demand, in whole or in part, out of said fund in priority to claims and demands in respect of which claim for preference is not made, or if made, not allowed; and this Court reserves jurisdiction hereafter to pass upon and determine all such questions as may be presented to it in accordance with the practice of the Court. Any party to this cause or otherwise interested in the distribution of such funds in accordance with the provisions of the Clause C may appear and contest the validity or amount of any claim or demand presented pursuant to said orders of this Court and not finally passed upon by this Court before the date of sale of the property by this decree directed to be sold or of any claim or demand arising after the entry of this decree, or the validity of any alleged right of preference in respect of any claim or demand as aforesaid, and may appeal from any order or decree of this Court made in respect of any such claim or demand or asserted right of preference.

All questions relating to the amounts of compensation, charges, allowances, costs, disbursements and expenses referred to in this decree are hereby respectively reserved by this Court for further hearing and determination, and all payments to be made therefor, unless agreed upon by the parties in interest, shall be hereafter determined, fixed, allowed and settled by this Court.

[fol. 595] Article Fifteenth. When the amounts payable out of the proceeds of sale upon the Refunding Bonds and appurtenant coupons maturing July 1, 1914, shall have been determined, the Special Master shall give notice of the time and place where Refunding Bonds and appurtenant coupons of July 1, 1914, may be presented for payment by publication at least once a week for three successive weeks previous to the date so fixed in a newspaper published in the City of New York, N. Y., and in a newspaper published in the City of St. Louis, Mo. The holders of Refunding Bonds and appurtenant coupons of July 1, 1914, who shall fail to present the same for payment at the time and place specified in such notice shall not be entitled to payment of any interest thereon out of the proceeds of sale after the date so fixed and of which notice shall have been given as hereinbefore provided. The Special Master may select such place for such presentation as shall be most convenient to him, either at the office of Guaranty Trust Company of New York or elsewhere, and may make any such payment either personally or through said Guaranty Trust Company of New York, or any other agent selected by the Special Master.

Article Sixteenth. When the amounts payable out of the proceeds of sale upon the General Lien Bonds and appurtenant coupons of May 1, 1914, and November 1, 1914, shall have been determined, the Special Master shall give notice of the time and place where General Lien Bonds and appurtenant coupons of May 1, 1914, and November 1, 1914, may be presented for payment, by publication at least once a week for three successive weeks previous to the date so fixed in a newspaper published in the City of New York, N. Y., and in a newspaper published in the City of St. Louis, Mo. The holders of General Lien Bonds and coupons thereunto appertaining of May 1, 1914, and November 1, 1914, who shall fail to present the same for payment at the time and place specified in such notice shall not be entitled to payment of any interest thereon out of the proceeds of sale after the date so fixed and of which notice shall have been given as hereinbefore provided. The Special Master may select such place for such presentation as shall be most convenient to him, either at the office of the Bankers Trust Company or elsewhere, and may make any such payment

either personally or through said Bankers Trust Company, or any other agent selected by the Special Master.

Article Seventeenth. Payments out of the proceeds of sale to holders of claims and demands against the defendant [fol. 596] Railroad Company, other than to North American Company of the promissory note held by it as provided in Article Fourteenth, and other than as provided in Article Fifteenth and Article Sixteenth, shall be made only on the further order or direction of this Court. All such payments when so authorized may be made by the Special Master personally at any place most convenient to him, or may be made through such bank or trust company in the City of St. Louis as the Special Master shall with the approval of this Court designate for that purpose.

Article Eighteenth. Upon confirmation of the sale and upon payment by any purchaser or his assigns, of the purchase price, or such portion thereof as shall pursuant to the provisions of this decree be required to be paid in advance of the delivery of the deed or other instruments of conveyance and transfer by the Special Master or upon the making by him or them of such provision for the payment thereof as this Court shall approve, the Special Master making the sale shall execute a deed or deeds or other proper instruments conveying, assigning and transferring to such purchaser or his assigns, the property sold to such purchaser; subject however, to Article Thirteenth of this decree. The aforesaid deed or deeds or other instruments of conveyance or assignment or transfer shall run and be delivered to such purchaser, or at his election, to his assigns, and upon the production thereof or of a certified copy or copies thereof the grantee or grantees therein named shall be let into the possession of the property so conveyed or transferred, and shall after such delivery of possession hold, possess and enjoy the property so conveyed and transferred, and every part and parcel thereof, free from the trust and lien imposed thereon by the Refunding Mortgage and free from any trust and lien imposed thereon by the General Lien Mortgage and free from all claims, rights, interest or equity of redemption of, in or to the same by or of the defendant Railroad Company, its successors and assigns, and by or of the creditors and stockholders of the defendant Railroad

Company, and by or of all persons claiming by, under or through the defendant Railroad Company, its creditors or its stockholders; provided, however, that no sale hereunder of any property specified in Article Twenty-sixth and Article Twenty-seventh of this decree shall be confirmed to any purchaser who shall purchase said property on behalf of, or for the benefit of, any corporation organized, or to be organized, for the purpose or with the intention that it shall become the owner of said property, or any part thereof or [fol. 597] any beneficial interest therein, through any sale under this decree, pursuant to any scheme, plan or agreement whereby any stockholder or stockholders of the defendant Railroad Company shall receive any stock, bonds or other beneficial interest in such corporation on account of their stock in the defendant Railroad Company, although he or they may pay some other consideration in addition therefor, unless and until there shall have been made under or pursuant to or in connection with such scheme, plan, or agreement, to creditors of the defendant Railroad Company who have presented their claims in accordance with the orders of this Court in this cause, or in any constituent cause, and who have claims subordinate in lien and inferior in equity to the Refunding Mortgage or to the General Lien Mortgage, a fair and timely offer of cash, or a fair and timely offer of participation in such corporation through stocks, bonds or otherwise; and this Court reserves jurisdiction to determine whether such an offer to such creditors has been made under or pursuant to or in connection with any such scheme, plan or agreement, and jurisdiction to modify this decree in case it determines that no such offer has been made. The Special Master shall accept no bid from anyone who shall not, prior to any offer by the Special Master for sale under this decree, file with the Special Master a statement whether he proposes to bid on behalf of any such corporation, and if so, also file a complete statement of any such scheme, or a copy of such plan or agreement, and a statement of any offers which have been made to such creditors of the defendant Railroad Company under or pursuant to or in connection with such scheme, plan or agreement.

Article Nineteenth. The defendant Railroad Company shall at the time of the execution of any deed or deeds or

instruments of conveyance, transfer and assignment by the Special Master, and by way of further assurance, deliver a similar deed or deeds or other instruments of conveyance, assignment and transfer to the grantee or grantees in such deed or instrument of conveyance of the Special Master, or if any such purchaser or his assigns, shall so request, shall join with the Special Master in the execution of the deed or deed- or instruments of conveyance, assignment and transfer to be made by said Special Master, and the defendant Railroad Company shall thereby convey, transfer, assign and release to such grantee or grantees all its right, title [fol. 598] and interest of, in and to the property so conveyed, assigned and transferred by said Special Master.

Article Twentieth. Said Guaranty Trust Company of New York, as trustee, at the time of the execution of the deed or deeds or other instruments of conveyance, assignment and transfer thereof by the Special Master, shall release to the grantee or grantees of any property embraced in the Refunding Mortgage by proper instrument, all its right, title and interest as trustee under the Refunding Mortgage of, in and to the property so conveyed, assigned or transferred.

Article Twenty-first. Said Bankers Trust Company and Neill A. McMillan, as trustees, at the time of the execution of the deed or deeds or other instruments of conveyance, assignment and transfer thereof by the Special Master shall release to the grantee or grantees, of any property embraced in the General Lien Mortgage, by proper instrument, all their right, title and interest as trustees under the General Lien Mortgage of, in and to the property so conveyed, assigned and transferred.

Article Twenty-second. In case the proceeds of sale applicable to the payment of the Refunding Bonds shall not be sufficient, when applied in accordance with the provisions of this decree, to pay in full the amount due and unpaid upon the Refunding Bonds and the appurtenant coupons of July 1, 1914, together with interest thereon at the rate of six per cent. from the date of this decree to the date fixed by the Special Master as provided by this decree, for presentation thereof for payment, then the Special Master shall report to the Court the amount of any such de-

iciency or deficiencies, and said Guaranty Trust Company of New York, as trustee under the Refunding Mortgage, shall have judgment against the defendant Railroad Company for the amount of any such deficiency and shall have execution therefor pursuant to the rules and practice of this Court.

Article Twenty-third. In case the proceeds of sale applicable to the payment of the General Lien Bonds shall not be sufficient when applied in accordance with the provisions of this decree, to pay in full the amount due and unpaid upon the General Lien Bonds and the appurtenant coupons of May 1, 1914, and November 1, 1914, together with interest thereon at the rate of six per cent. per annum from the date of this decree to the date fixed by the Special Master as provided in this decree for presentation [fol. 599] for payment, then the Special Master shall report to the Court the amount of any such deficiency or deficiencies, and said Bankers Trust Company and Neill A. McMillan, as trustees under the General Lien Mortgage, shall have judgment against the defendant Railroad Company for the amount of any such deficiency and shall have execution therefor pursuant to the rules and practice of this Court.

Article Twenty-fourth. The Special Master shall make as soon as may be a report to this Court of any sale under this decree. The Special Master shall make from time to time such other reports as shall be necessary or desirable to show his action in the premises. The Court reserves the right in term or at chambers to appoint the Special Master referred to in this decree and to appoint from time to time another person Special Master under this decree, with all the powers by this decree conferred upon the Special Master in case of the death or inability to act of the Special Master first named or other appointee, or in case of the resignation of said Special Master or other appointee, or in case of failure to act or in case of removal by this Court of said Special Master or other appointee.

Article Twenty-fifth. All questions not hereby disposed of, are reserved for future adjudication. Any party to this cause and any party to any one of the separate causes consolidated into this cause and any party who has inter-

vened in this cause or in any constituent cause may at any time apply to this Court for further relief at the foot of this decree; and this Court reserves jurisdiction to determine all issues of law and fact raised under the intervening petitions of The Kansas City Southern Railway Company, The Kansas City Terminal Railway Company, Illinois Trust and Savings Bank; Atchison, Topeka and Santa Fe Railway Company, The Missouri Pacific Railway Company; Chicago, Burlington & Quincy Railroad Company, Chicago & Alton Railway Company, Chicago Great Western Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Wabash Railway Company, Union Pacific Railroad Company and Kansas City Southern Railway Company; and Fort Smith & Van Buren Railway Company and Kansas City Southern Railway Company, and any amendment or supplement thereto which this Court may permit to be filed herein, and to enforce such determination with like effect as if such adjudication had been had prior to the entry of this decree; and any sale or purchase under this decree shall be subject to such enforcement of such adjudication.

[fol. 600] Article Twenty-sixth. The Refunding Mortgage is a lien on the following properties subject as stated in Article Fourth of this decree:

\* \* \* \* \*

"Here follows detailed description of property covered by the Refunding Mortgage."

Article Twenty-seventh. The General Lien Mortgage is a lien on the following properties, subject as stated in Article Fourth, and as to such part thereof as is by this decree adjudged to be embraced in the Refunding Mortgage and is described in Article Twenty-sixth of this decree, to the lien of the Refunding Mortgage:

\* \* \* \* \*

"Here follows detailed description of property covered by The General Lien Mortgage."

The Receivers shall, not less than twenty days prior to the date fixed for the sale under this decree of the property by this decree directed to be sold, file with the Clerk of

this Court a statement or statements describing by metes and bounds the properties specified in Clause I of this Article, stating the names in which such properties are held and specifying by the name of the grantor and the place of record the deeds under which such properties have been acquired. Such statements shall be advisory only and nothing therein contained shall constitute ground for the release of any purchaser because of any representation therein nor omission therefrom.

Walter H. Sanborn, United States Circuit Judge.

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Mr. Murphy: Mr. Cowan, from the inception of this litigation before the Interstate Commerce Commission down to the present date have you done everything possible to expedite the hearing of these cases?

Mr. Miller: I must object to that because that is purely a conclusion that you are calling for.

The Master: I think that that is a conclusion. You may show the different steps you have taken in the matter. I will permit him to testify as to what he did toward the final adjudication of these claims within the period named in which to present claims. (p. 52)

[fol. 601] A. We did everything possible at all stages in the presentation of the various phases of these cases to expedite and bring the matter to a speedy conclusion.

Mr. Murphy: I think that is all, Mr. Miller.

Thereupon the defendant offered the following evidence:

Mr. Miller: We offer in evidence the interlocutory decree, being order No. 98 in this cause, and it refers specifically to section 19 on pages 17, 18 and 19 of the copy of the decree, with the privilege to either of the parties to offer any other portions.

Mr. Saunders: What is the purpose of that offer, Mr. Miller?

Mr. Miller: Just as to the filing of the claims here.

Mr. Saunders: I submit we are not bound in any manner by that. We are not a party to those proceedings. At that time the claims were being contested by the railroad company. We submit if it is offered for the purpose of showing

that the prosecution of these claims was not barred by the interlocutory order, it is incompetent and immaterial for that purpose.

The Master: In order to get the whole record before Judge Sanborn, I will overrule the objection and admit it.

To which ruling of the Master the intervenors then and there duly excepted and still except.

Said interlocutory decree, order No. 98, is in words and figures as follows, to-wit:

DEFT. EX. 1

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF  
MISSOURI

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

Consolidated Cause

Interlocutory Degree

This cause came on for hearing on this 29th day of May, 1914, upon bill and answer, pursuant to stipulation, and upon petition of the Receivers and motion of the complainants for an order prescribing the time within which creditors may prove their claims against the estate herein, and upon consideration thereof, it is

Ordered, adjudged and decreed as follows: \* \* \*

That all of the property of said defendant, St. Louis and San Francisco Railroad Company, whether at law or in equity, whether in action or in possession, and wherever situated, be, and the same is, hereby, sequestered and set apart to pay the just debts and obligations of the defendant, and the Receivers herein are hereby directed and empowered to hold, operate and apply the same to that purpose

pursuant to the orders and decrees of this Court. That in case the said debts are not paid by said Receivers or by said defendant, the property of the defendant be sold at such time or times, in such quantities and in such manner as shall be subsequently adjudged herein, and that the proceeds of such sale or sales be applied to the payment of said debts.

And it is further ordered, adjudged and decreed that the holder or holders of any claim, claims or demands or obligations of or against said defendant, St. Louis and San Francisco Railroad Company, and all persons who claim any interest in or lien upon any of the funds or property in the hands of said Receivers, as creditors of said defendant, or in any other way, file verified statements of the natures, dates of accrual and amounts of their respective claims and demands and obligations, with Thomas T. Fauntleroy, Special Master, at St. Louis, in the State of Missouri, on or before the first day of October, 1914, and if any of them fail so to do, they and each of them so failing shall be barred from sharing in the benefit of the distribution of the moneys and proceeds of the property of said defendant, St. Louis and San Francisco Railroad Company, that now are or hereafter shall be in the hands of the Receivers in this case, and from sharing or participating in the benefits of any distribution of the proceeds arising from the sale of said railroad and other property, if such sale shall hereafter be adjudged and decreed in this cause. Claims shall be proved on the basis of allowance of interest to May 27, 1913, the date of the appointment of the Receivers herein, without prejudice to the right of the creditors to demand and receive interest accruing thereafter upon the amounts found to be due to said creditors respectively on said 27th day of May, 1913. Any party to this suit and any party who files his claim or demand or obligation in accordance with this order, and the Receivers, may file an answer to [fol. 603] the claim or demand or obligation of any party herein with said Special Master within thirty days after October first, 1914, and may contest the same. All claims and demands and obligations so filed are hereby referred to said Special Master for him to report the amounts justly owing thereon and the order in which they are lawfully entitled to payment. The Special Master shall make and

file, in writing, his report on each and every such claim or demand or obligation which he may hear and adjudicate. Any party to such claim or demand or obligation, or other interested party herein, who feels aggrieved at the decision of the Special Master may, within 20 days from the time of the filing of such report of the Special Master, file exceptions thereto, and no exception not so filed will be considered by the Court, and if no exception is within that period filed by any such party, the report shall stand confirmed. The Special Master herein shall cause that portion of this decree relating to the presentation and allowance of claims to be published forthwith, once each week, for six successive weeks, in a newspaper of general circulation published in the City of St. Louis, State of Missouri; in a newspaper of general circulation published in the City of Memphis, State of Tennessee; in a newspaper of general circulation published in the City of Birmingham, State of Alabama; and in a newspaper of general circulation published in the City of New York, State of New York.

Jurisdiction to make any and all further orders and decrees fit in this suit or proceeding is hereby expressly reserved.

Walter H. Sanborn, Circuit Judge.

Dated this 29th day of May, 1914.

Filed June 1, 1914. W. W. Nall, Clerk.

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Mr. Miller: I ask if the intervenors will admit that publication of the portion of the interlocutory decree relating to the presentation of claims, as provided in section 19, in the City of St. Louis, Mo.; Memphis, Tenn.; Birmingham, Ala., and in the City of New York, the decree providing that the Special Master shall cause such publication of claims—I ask if you will admit that publication was made.

Mr. Murphy: We will admit that, but we won't admit that publication was made in the State of Texas.

Mr. Miller: All I know as to that is that publication was made in the places provided here and not elsewhere.

[fol. 604] Mr. Murphy: Suppose we make that admission subject to objection.

Mr. Miller: That is all right.

The Master: That will be admitted subject to the objection.

Mr. Miller: We introduce in evidence the order discharging the receivers, and I ask if you will admit the first paragraph on page three of the printed copy requiring the purchaser to cause notice of the contents of the order to be published in daily newspapers published in the cities of Birmingham, Ala.; Memphis, Tennessee and St. Louis, Missouri, that notice was published as required in that order?

Mr. Murphy: Subject to the objection, we will admit that, and so far as you know, no notice other than that was published?

Mr. Miller: I know of no notices other than that.

The Master: That will be received subject to objection.

Said order discharging the receivers is in words and figures as follows, to-wit:

(Said order omitted here as same is identical with Intervenor's Ex. 18.)

At this point counsel for intervenors admitted, subject to the said objections that have been made by them, that as to the order made by the Court permitting the filing of claims by intervenors, and others made by the court upon individual claims within any fixed time, that the last and final order was made by the Court to expire on February 1, 1916 (p. 55).

Said objections were by the Master overruled; to which ruling, intervenors by counsel duly excepted and still except.

Counsel for defendant at this point offered in evidence the order dated May 5, 1915, filed May 8, 1915, extending the time for filing claims under the interlocutory order to June 1, 1915; the order dated August 25, 1915, filed August 27, 1915, extending the time of filing claims under the interlocutory decree to November 1, 1915; the order filed January 24, 1916, extending time for filing claims under the interlocutory order to February 1, 1916,

To each of said offers counsel for the intervenors objected for the reason that they were not bound in any manner by said orders, that they were not a party to those proceedings; that at that time their claims were being

contested by the railroad company; and that if they are offered for the purpose of showing that the prosecution of their claims was barred by the interlocutory order, they are incompetent and immaterial for that purpose.

The Master: It will be received subject to the objection.

To which rulings of the Special Master, intervenors then and there duly excepted and still except. (p. 55).

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EAST-  
ERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MIS-  
SOURI

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant.

In the Matter of the Intervening and Supplemental Inter-  
vening Petitions of E. B. SPILLER et al. Intervening Pe-  
tition No. 402.

In the Matter of the Intervening and Supplemental Inter-  
vening Petitions of E. B. SPILLER. Intervening Petition  
No. 403

Consolidated under the Style

"In the Matter of the Interventions of E. B. SPILLER et al.  
Consolidated Cause Final. No. 4174

STIPULATION TO OMIT CERTAIN ORDERS OFFERED IN EVIDENCE  
AND STATEMENT RELATIVE THERETO—Filed August 26,  
1924

It is Hereby Stipulated and Agreed by and between the  
above named intervenors and the St. Louis & San Fran-  
cisco Railroad Company, and the St. Louis-San Francisco  
Railway Company, parties herein, that the Clerk of this  
court may omit from the transcript of the record and pro-  
ceedings in this cause to be filed in the United States Cir-  
cuit Court of Appeals, for the Eighth Circuit, the orders  
offered in evidence before the Special Master, by the de-

fendant and filed under date of May 8, 1915, August 27, 1915, and February 1, 1916, respectively, extending the time for filing claims under the interlocutory decree, and that the Clerk of this court may substitute in lieu thereof the following statement;

The order dated May 5, 1915, made by Honorable Walter H. Sanborn and filed May 8, 1915, in consolidated cause, [fol. 606] final, No. 4174, In Equity, North American Company, complainant, vs. St. Louis & San Francisco Railroad Company, defendant, ordered that the time fixed by the interlocutory decree herein of May 29, 1914, within which verified statements of the natures, dates of accrual and amounts of claims, demands and obligations against the St. Louis & San Francisco Railroad Company, may be filed, be extended to June 1, 1915. The order dated August 25, 1915, and filed August 27, 1915, ordered that the time for presenting claims against the St. Louis & San Francisco Railroad Company be extended to November 1, 1915. The order filed January 24, 1916, ordered that the time for presenting claims under the interlocutory order be extended to February 1, 1916.

(Sgd.) John S. Leahy, Walter H. Saunders, D. A. Murphy, S. H. Cowan, Attorneys for Interveners.  
W. F. Evans, E. T. Miller, Attorneys for St. Louis & San Francisco Railroad Company and St. Louis-San Francisco Railway Company.

August 25, 1924.

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At this point, counsel for intervenors admitted, subject to the foregoing objections, upon the statement of counsel for defendant, that in an order dated May 25, 1917, filed May 28, 1917, provision was made for filing claims against the receivers, and that order provided that the Special Master may when requested by either of the parties in interest, cause that portion of the order to be published once a week for three consecutive weeks in a newspaper of general circulation in the Cities of St. Louis, Missouri, Memphis, Tennessee; Birmingham, Alabama, and the City of New York, New York, and that the notices were published as provided by that order (p. 56).

Mr. Murphy: That is admitted, subject to the objection. It is admitted that all of these intervenors are citizens and residents of the State of Texas, is it not?

Mr. Miller: You mean Mr. Spiller?

Mr. Murphy: Yes.

Mr. Miller: If Mr. Spiller says he is, that is enough.

[fol. 607] Mr. Murphy: Mr. Spiller, are all these intervenors here citizens and residents of the State of Texas, and have they been during the entire course of this litigation?

Mr. Spiller: No, not all of them are citizens and residents of Texas, some of them are in Oklahoma.

Mr. Murphy: But you have been a citizen and resident of the State of Texas, all the time?

Mr. Spiller: Yes (p. 57).

Mr. Miller:

Q. Are none of them residents of any other state but Oklahoma or Texas?

Mr. Spiller: Well, there might be some of them that live in other states.

Mr. Murphy: But you know that most of them live in Texas or in Oklahoma?

Mr. Spiller: I know positively that most of them live in Oklahoma and Texas. There might be an occasional one that is a resident of some other state.

Mr. Murphy: Mr. Spiller, did you ever have any knowledge of any orders made by the court relative to the time within which claims could be filed?

To which question counsel for defendant objected on the ground that the law presumes that they did have notice, which objection was by the master overruled; to which ruling counsel duly excepted and still except.

Mr. Spiller: No, I never knew that.

In answer to question put by counsel for interveners, whether he had any notice or knowledge of any such order after his examination of the record, Mr. Cowan replied that he had no notice; whether he had knowledge of them, he did not know about that; that he had no notice relative to any particular order; that he did not know of any order made.

He knew of the appointment of the Receivers; he has been practicing law for a number of years, and has had many receivership suits in his law practice; he knows that in receivership suits, generally speaking, it is the usual procedure that orders are made from time to time by the court fixing the time for filing claims against insolvent corporations.

It was admitted for the purpose of the record, that the petition in case No. 4320 contained the same allegations as the [fol. 608] petition in case No. 4308, with exception as to parties and amounts (p. 59).

At this point, counsel for interveners offered in evidence, copy of Judge Sanborn's opinion, permitting the intervention to be filed.

To which offer and question counsel for defendant objected for the reasons aforesaid; which objections were overruled, to which ruling the Special Master, said defendant, then and there duly excepted and still except.

Said opinion of Judge Sanborn is in words and figures as follows, to-wit:

(Said opinion omitted here as same is attached to order granting leave to Spiller to file intervening petition, hereinbefore set out.)

Thereupon, the hearing was adjourned, date to be thereafter agreed upon.

Pursuant to adjournment, on Saturday December 10, 1921, the hearing was resumed before the Special Master.

Further evidence was offered on behalf of defendant, as follows:

Counsel for defendant offered in evidence, the petition filed in the Federal Court at St. Louis, Missouri, on January 11, 1915, wherein these interveners were plaintiffs and the railroad company was defendant, the answer filed April 12, 1915, and the reply filed April 15, 1915, covering the same claims that are involved in this intervention, with the exception of the claim against the receivers, for attorney's fees; said cause being dismissed for want of prosecution March 17, 1917, being reinstated on application of the plaintiffs on March 22, 1917, and being finally dismissed for want of prosecution on November 6, 1918.

Mr. Murphy: We object to the introduction of each and all of the papers offered and to the testimony relative to the dismissal of the petition for want of prosecution, for the reason that each and all of the papers offered are irrelevant and immaterial.

The Master: Well, I am going to receive all of the testimony subject to objection.

To which ruling of the Master the interveners then and there duly excepted and still except.

Said papers, Defendant's Exhibit 6, 6a and 6b are in words and figures as follows, to-wit:

[fol. 609]

DEFT. EX. 6

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION, AT ST.  
LOUIS

No. 4393

E. B. SPILLER, Plaintiff,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, a Corpora-  
tion, Defendant

Plaintiff's Original Petition

Cowan & Burney, Fort Worth, Texas; B. F. Deatherage,  
Kansas City, Mo.; James A. Seddon, St. Louis, Mo., At-  
torneys for Plaintiff.

— — —, 1914.

To the Honorable Judge of said Court:

# I

E. B. Spiller, plaintiff, who resides in Tarrant County, in the Northern District of Texas, at Fort Worth, complaining of the defendant, St. Louis & San Francisco Railway Company, which owns and operates its line of railway through the Eastern District of Missouri and has a principal operating office in said District at Kansas City, Missouri; represents:

## II

That the defendant is now and at the dates herein named was a common carrier engaged in the transportation of cattle in connection with other lines of railway from points in Texas, Oklahoma and New Mexico to Kansas City and St. Joseph, Missouri, St. Louis, Missouri, National Stock Yards and Chicago, Illinois, and to other live stock markets, and was a party to the tariffs of rates, fares and charges constituting joint rates and through routes, from the points named in Appendix A to the order of the Interstate Commerce Commission herein referred to and made a part hereof, as Exhibit to this petition, at the rates of freight shown in said Appendix A.

## III

That on the 12th day of January, 1914, the Interstate Commerce Commission, after full hearing and in all things [fol. 610] proceeding legally, in the cause pending before it, being No. 732, Cattle Raisers Association of Texas et al. vs. Missouri, Kansas & Texas Railway Company et al., in which all of the carriers herein named were parties, made its lawful order directing the defendant and each of the carriers named in said order to pay to the plaintiff damages on account of charging said shippers named as consignors in said report and order unjust and unreasonable rates on shipments of cattle shown in said Appendix A in the amounts therein named, said report and order of the Commission being Unreported Opinion No. A-583 hereto attached and made a part hereof as Exhibit A in which the unreasonable rates paid, the rates established by the Commission, the shipments made for which the unreasonable rates were paid, the amount of principal and interest as damages which the defendant and other carriers therein named were directed severally to pay to plaintiff, are fully set out in connection with the findings in said Supplemental Report and order of the Commission, and in which amounts the shippers named as consignors, who assigned their claims to plaintiff, as therein shown, were damaged by the defendant as found by the Commission, and which the plaintiff as assignee as stated in said

report of the Commission is entitled to recover of said defendant, St. Louis & San Francisco Railway Company, principal \$20,211.95, interest \$7,470.80.

The detailed claims and amounts sued for herein being for and on account of the shipments made and freight paid to the defendant St. Louis & San Francisco Railway Co., by said consignors named in said order and appendix thereto, where the name of the consignor is followed by the letter S and those followed by the letter C and also under which the abbreviation of the word ditto is used (Do), meaning a repetition of the preceding line, name and letter indicating to whom the assignment was made as shown by said Report and order of the Commission and explained by notation on page 5 of the Appendix thereto, to recover each and all of which claims and interest which the Commission by said order directed the St. Louis & San Francisco Railway Company to pay to plaintiff the plaintiff sues the said defendant.

#### IV

That the damages so claimed grew out of the fact that in the year 1903, the defendant and other Railway Companies in said cause 732 and their connecting carriers being engaged in the business of transporting cattle from said points of origin mentioned in said Appendix A to the markets of destinations as shown in said Appendix, on or about [fol. 611] March, 1903, advanced the rates for transporting cattle from said points of origin named in said Appendix A, and from other points, to Kansas City, St. Joseph and St. Louis, Missouri; National Stock Yards and Chicago, Illinois; New Orleans, Louisiana, and other points, the amount of the advance applicable to shipments therein specified being the difference between the rates shown in the column of Appendix A marked "Rate paid" and in column marked "Rate ordered," which "Rate paid" named in said Appendix A the shippers named as consignors in said list were compelled severally to pay to the said carriers respectively as shown in said Appendix A on the shipments which they respectively made, as therein shown, which advanced rates were found by the Commission to be unjust and unreasonable, and on account of the payment of which on the said shipments, said carriers were ordered and di-

rected to pay the said principal sum and interest to plaintiff as assignee of the said shippers named as consignors, as shown in said report and order of the Commission, Exhibit A hereto.

That after said rates were advanced and on February 10, 1904, the Cattle Raisers Association of Texas, a voluntary organization of live stock producers and shippers of Texas, Oklahoma and New Mexico, brought its complaint before the Interstate Commerce Commission against the said carriers, and other carriers and their connecting lines of railway which had established said rates, alleging that said advanced rates were unjust and unreasonable, and the Commission, after full hearing of said complaint, in accordance with the Act to Regulate Commerce, on August 16, 1905, by its report and opinion in Cause No. 732, Cattle Raisers Association of Texas et al. vs. M. K. & T. Ry. Co. et al., reported in 11 I. C. C. 298, found it to be a fact that said advanced rates were unjust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce, as shown by the report of the Commission in said cause last above referred to, which report and opinion as published by the Interstate Commerce Commission is hereby referred to and plaintiff asks that it be considered a part hereof. That said advanced rates, notwithstanding the said decision of the Commission, remained in effect until November 17, 1908. That while the Commission found, as shown in its said report and opinion, that the said rates on cattle were advanced as aforesaid, and the advances thereof were unjust and unreasonable, no formal order was made by the Commission consequent upon its said report and opinion, [fol. 612] because the complainant, the Cattle Raisers Association, upon the promulgation of that report and opinion, made application to the Commission for more specific findings of fact, which application had not been decided or disposed of, but held under advisement by the Commission until the Act to Regulate Commerce was amended by what is known as the Hepburn law, effective August 28, 1906, and which application for more specific findings of fact was still pending before the Commission on August 29, 1906.

That on August 29, 1906, the complainant in behalf of itself and its members and others similarly situated, who were engaged in the business of raising, buying and ship-

ping cattle from the states of Texas, Oklahoma and New Mexico and Colorado over said lines of railway, to the markets shown as points of destination in said Appendix A hereinbefore referred to, filed its petition with the Interstate Commerce Commission reaffirming its previous allegations of its petition filed with the Commission February 10, 1914, charging that the rates on cattle from the points hereinbefore mentioned to the destinations mentioned, and the advances in said rates, and the rates advanced, were unjust and unreasonable, and praying that the Commission should proceed with such further hearing as it might deem necessary with respect to the allegations that the said rates were unjust and unreasonable, and for an order of the Interstate Commerce Commission prescribing the just and reasonable rates and praying for an order of reparation against the defendants respectively on behalf of the members of the Cattle Raisers Association of Texas, as shippers, and others similarly situated, for their respective damages accruing by reason of the payment of said unjust and unreasonable rates.

That thereupon the Interstate Commerce Commission, after answers duly filed by all the said defendants herein and their connecting carriers, proceeded to a full hearing of the matters contained in said petition, and after such full hearing as provided by law, the Interstate Commerce Commission on April 14, 1908, by its Report and Opinion, 13 I. C. C. 419, in said cause, found that said rates as advanced and the advances of said rates were unjust and unreasonable, as found in the previous opinion of the Commission as above referred to, reported in 11 I. C. C. 298, the finding of the Commission in its report of April 14, 1908, being in part as follows:

"It is our opinion, therefore, that the advances shown in the appendix to our former report, which is referred to and [fol. 613] made a part of this report, which were effected by the defendants during the year 1903, were unjust and unreasonable; that the present rates produced by those advances are unjust and unreasonable; that the rates in effect previous to said advance would be just and reasonable and ought not to be exceeded for the future."

The report and opinion of the Interstate Commerce Commission as shown by the official report in said cause, 13

I. C. C. 419, is here referred to and complainant asks that the same be taken as a part hereof. That in said report and opinion the Commission reserved for further consideration the matter or reparation when the specific claims thereafter should be presented.

That the Commission, in its said last named report, and by supplemental order in said cause, prescribed and fixed the reasonable rates for shipments of cattle from the points of origin named in said Appendix A hereinbefore referred to, to the destinations therein named, being the same rates designated therein as "rate ordered," which became effective November 17, 1908.

## V

That the said parties named as consignors in said Appendix A above referred to, being the owners thereof, shipped the carloads of cattle as therein shown, from the points to the destinations shown in said Appendix A and paid to defendant, the rate of freight named in the column marked "Rate paid," which rates as aforesaid were held by the Commission to be unjust, unreasonable and unlawful at the dates of said shipments, in the amounts as named in said Appendix A and that said owners as shippers and consignors were thereby damaged by defendant in the amount of the unjust and unreasonable part of the rates as shown by the difference between "Rate paid" and "Rate ordered," as shown in Appendix A, under the heading St. Louis & San Francisco Railway Company, pages 52 to 62, the aggregate damages against said defendant to which plaintiff is entitled being, principal \$20,211.95, interest \$7,470.80. The rate paid was as aforesaid found by the Commission to be unjust and unreasonable and the rate ordered was found to be the just and reasonable rate applicable to such shipment, when made.

## VI

And plaintiff alleges that the facts as found by the Commission in said reports and opinion are true and correct. [fol. 614] That said shippers named in said Appendix A as consignors, and E. B. Spiller, as secretary of the Cattle Raisers Association of Texas, and his predecessor in office, H. E. Cowley, in due time and in accordance with law, filed

and caused to be filed with the Interstate Commerce Commission for and on account of the shippers named as consignors, and on account of said Spiller and Crowley as assignees for and on account of said shipments and freight paid, their petitions and claims for reparation for the amount of said unlawful charge which the Commission by its said report and order of January 12, 1914, Exhibit A hereto, directed the defendant to pay. That the said claims and the rights of the said owners as shippers and consignors as aforesaid were duly and legally assigned to E. B. Spiller, as shown in the report and order of the Commission, Exhibit A hereof, so that he became and was, at the date of said order, and now is, the legal and equitable owner and holder thereof and entitled to have and recover the damages resulting to said shippers by reason of the premises, and as such was entitled to have the order of the Interstate Commerce Commission as aforesaid ordering and directing the said carriers in said cause to pay principal and interest, together with interest thereon, and is entitled to recover the same as awarded against the St. Louis & San Francisco Railway Company, together with interest and attorneys' fees as provided by law.

That the said order of the Interstate Commerce Commission, Exhibit A hereof, directing the railroads therein named to pay the aforesaid damages as therein shown, was duly served upon the defendant herein, but though often requested that said defendant has failed and refused and still fails and refuses to pay the same or any part thereof, and therefore is liable to the plaintiff in the full amount of said damages, principal, interest and attorneys' fees.

## VII

Wherefore, premises considered, the plaintiff prays for citation in due form and on final hearing for judgment for the aforesaid damages against the St. Louis & San Francisco Railway Company as awarded against that Company, interest, costs and attorneys' fees, and in duty bound will ever pray.

### Second Count

And the plaintiff, E. B. Spiller, reaffirming and adopting the foregoing allegations, and adopting Exhibit A thereto as Exhibit A to this count, and making reference to the said

allegations and Exhibit as a part of this count of this petition, and complaining of the said defendant, the St. Louis [fol. 615] & San Francisco Railway Company, and for cause of action against said Company and suing for treble damages under the anti-trust laws of the United States, to-wit, 26 Statute at Large 209-210, Act of July 2, 1890, and 28 Statute at Large 570, further alleges:

The St. Louis & San Francisco Railway Co. owns and operates its line of railway through the western district of Missouri and is to be found in said district.

That on or about March 3, 1903, the aforesaid defendant St. Louis & San Francisco Railway Company in combination and conspiracy with the Missouri, Kansas & Texas Railway Company, the Missouri Pacific Railway Company, the St. Louis & San Francisco Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Chicago, Rock Island & Pacific Railway Company and the Chicago & Alton Railway Company, the St. Louis, Iron Mountain & Southern Railway Company, the Chicago & East Illinois Railway Company, the Illinois Central Railroad Company, the Gulf, Colorado & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company of Texas, the St. Louis, San Francisco and Texas Railway Company, The Fort Worth and Rio Grande Railway Company, The Fort Worth and Denver City Railway Company, The Colorado and Southern Railway Company, The Texas Central Railway Company, The Houston and Texas Central Railway Company, The International and Great Northern Railway Company, the Texas Midland Railway Company, The Galveston, Harrisburg and San Antonio Railway Company, the St. Louis Southwestern Railway Company of Texas, The San Antonio and Arkansas Pass Railway Company, The Wichita Valley Railway Company, and all other railroad companies operating at that time in Texas, Oklahoma, New Mexico and Colorado, engaged in the through transportation of cattle from said points of origin to said points of destination, parties defendant to said cause 732, before the Interstate Commerce Commission, by their said acts, combination and conspiracy in violation of law, in restraint of interstate commerce as to the rates of freight on the shipments made as herein referred to, by the

advances of the said rates, imposed upon all shippers, and particularly those mentioned as consignors in said Appendix A, said unreasonable rates, maintained the same and charged said rates on the said shipments as shown in said report and order of the Commission hereto attached as Exhibit A.

[fol. 616] That the combination and conspiracy consisted of the said defendant and said connecting and other carriers, on or about March 3, 1903, coming together by their representatives and by means of personal communication and by correspondence, to establish and publish freight rates on cattle and other live stock as well as on the other commodities by joint tariffs of rates, to which all of said defendants were parties, and by tariffs issued by the individual lines from their own stations and individual lines and their connecting lines where two or more lines participated in such transportation and by the joint tariffs of all of said defendants; said rates applying from said points of origin named in said Appendix A aforesaid to the destinations therein named, and were the rates named in the column headed "rate paid."

That defendant and all of said carriers and the others in combination and conspiracy with each other put into effect said rates as joint and several rates and maintained them in restraint of interstate commerce in cattle, shipped from said points of origin to said destination, and by virtue of the said combination and conspiracy eliminated all competition in said rates, and advanced the same as found by the Interstate — Commission in its said supplemental report and order, Exhibit A hereto, as shown by the difference in the "rate paid" and "rate advanced" as shown in said Appendix A, which advance was unjust, unreasonable and unlawful, and an unlawful restraint of interstate commerce, and were by combination and conspiracy continued in force by defendant down to November 17, 1908.

That the parties named in said Appendix A made the shipments and paid said unlawful rates as therein shown and consequently were damaged in their business and property to the extent of the difference in said rates and the rates ordered as shown in said Appendix A, in the aggregate amount and interest as shown by the finding of the Commission aforesaid; and that said Consignors so dam-

aged assigned their claims for damages to plaintiff as shown in said Supplemental Report and Order of the Commission attached hereto as Exhibit A, as a part hereof, so that plaintiff is entitled to all the rights of the said injured parties, and is therefore damaged by virtue of the premises in his business and property in said amounts, for all of which defendant is liable to plaintiff, and which said defendant has failed and refused and still refuses to pay.

That said parties so damaged were entitled to treble damages and that plaintiff as assignee is entitled to recover [fol. 617] the same, jointly and severally, together with interest, costs and attorneys' fees.

The plaintiff, therefore, prays citation, and on final hearing for his aforesaid damages, interest and costs and for reasonable attorneys fees, and for general relief.

Cowan & Burney, Fort Worth, Texas; B. F. Deatherage, Kansas City, Mo.; Jas. A. Seddon, St. Louis, Mo., Attorneys for Plaintiff.

Fort Worth, Texas, — —, 1914.

STATE OF TEXAS,

County of Tarrant:

Before me, the undersigned authority, this day personally appeared E. B. Spiller, plaintiff in the above case, who being by me duly sworn stated upon his oath that the allegations of the foregoing petition are true and correct.

(Signed) E. B. Spiller, Plaintiff.

Subscribed and sworn to before me this the 5th day of January, 1915. (Signed) M. E. Griffiths, Notary Public. (Seal.)

## DEFT. EX. 6A

In the District Court of the United States within and for the Eastern Division of the Eastern District of Missouri.

No. 4393

E. B. SPILLER, Plaintiff,

VS.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,  
Defendant

Answer

Comes now defendant, and for its answer to the first count of the petition filed herein, states:

I

Defendant admits that it is a corporation, that its lines of railway extend through the Eastern District of Missouri, [fol. 618] and that its principal place of business is in the City of St. Louis, Missouri.

II

Defendant further admits, that at all the times mentioned in the petition, it was a common carrier engaged in the transportation of cattle in connection with other lines of railway between the points in said petition mentioned, and that it was a party to the tariff of rates and charges constituting joint rates from the points named in Appendix A attached to said petition, in so far as the same refers to the defendant.

III

Defendant further admits, that on January 12, 1914, the Interstate Commerce Commission, in Cause No. 732 pending before it, of the Cattle Raisers' Association of Texas vs. Missouri, Kansas and Texas Railway Company, et al., made an order directing this defendant to pay to the plaintiff certain moneys claimed to have been unreasonable rates paid by shippers of cattle to this defendant for transportation of live stock, with interest, but it denies that said

order of the Interstate Commerce Commission was unlawful, and denies that defendant collected unjust or unreasonable rates on shipments of cattle referred to in Appendix A of Exhibit A to said petition; and denies that the rates charged and collected by it were unjust or unreasonable, and denies that any shippers of live stock mentioned in said Appendix A of Exhibit A were damaged by reason of the rates collected by the defendant, or that plaintiff was damaged by reason thereof; but on the contrary, defendant avers that the plaintiff had no right or authority to obtain from said Interstate Commerce Commission as assignee of such alleged shippers, an award of reparation, and said Interstate Commerce Commission was without jurisdiction or authority to entertain any such alleged complaint, or to make the alleged award to said plaintiff as assignee.

Defendant further avers, that any shipments made by any shippers or consignors referred to in Appendix A over the line of the defendant, were under the regular and lawful tariff rates of the defendant in force at the time, which rates were just and reasonable, and which rates were voluntarily and without objection paid by the parties making such shipments, and that the schedule of alleged shipments set out in Appendix A is in many respects erroneous, and without foundation in fact.

[fol. 619]

#### IV

Defendant admits that on or about March, 1903, it advanced the rates for transporting cattle from points of origin named in said Appendix A, so far as the same refers to this defendant, to the other points mentioned therein affecting this defendant, as shown in such appendix, between the "rate ordered" and "rate paid"; but defendant denies that said advanced rates were unjust or unreasonable.

Defendant further admits that defendant was ordered by the Interstate Commerce Commission to pay the principal sum and interest named in said Exhibit A, and set forth in the order attached to said petition, to plaintiff as assignee of certain alleged shippers named as consignors, but defendant avers that said alleged or pretended consignors were not damaged by the collection of said rates, and that the plaintiff as assignee was not entitled to an award of

damages, or to the order of reparation made by said Interstate Commerce Commission.

Defendant further admits, that on February 10, 1904, the Cattle Raisers' Association of Texas filed a complaint before the Interstate Commerce Commission against the defendant and other lines of railway which had established said rates, alleging that such rates were unreasonable, and that, after hearing, said Interstate Commerce Commission, on August 16, 1905, in said Cause No. 732, pending before it, filed the report referred to in plaintiff's petition, in which it was stated that said advanced rates were unjust and unreasonable, but defendant avers that there was no reasonable evidence before said Interstate Commerce Commission upon which to base such statement, and that such statement and report of the Interstate Commerce Commission were arbitrary, without foundation in the evidence, and contrary to law; that at said times said Interstate Commerce Commission had no power to make or establish maximum rates for transportation, and that any such statement is without authority and effect; that the alleged report of said Interstate Commerce Commission was not made upon any investigations had upon any complaint filed before it by any person claiming to have been damaged by reason of anything done or omitted to be done by the defendant in contravention of the provisions of the Interstate Commerce Law, or by any person claiming to have been damaged by reason thereof.

Defendant admits that said advanced rates remained in effect until November 17, 1908.

[fol. 620] Defendant is without knowledge or information sufficient to form a belief as to the allegation why no formal order was made by the Interstate Commerce Commission pursuant to said alleged report and opinion, and it therefore denies the averments in Paragraph IV. of the petition in respect thereto.

Defendant admits that on August 29, 1906, said Cattle Raisers' Association filed a petition with the Interstate Commerce Commission charging that the rates on cattle from the points hereinbefore mentioned, and that the said advanced rates, were unjust and unreasonable, and praying that the Interstate Commerce Commission should have

further hearing and prescribe just and reasonable rates for the members of said Cattle Raisers' Association of Texas, and others similarly situated; but defendant avers that there was no prayer or demand for specific damages accruing to any shipper or to the plaintiff by reason of the payment of the rates complained of, and that, therefore, the Interstate Commerce Commission was without jurisdiction to make its alleged findings or order.

Defendant admits the hearing by the Interstate Commerce Commission, as stated, on April 14, 1908, and its report and opinion that said rates as advanced, and the advances of said rates, were unjust and unreasonable, as found in its previous opinion, and that the Interstate Commerce Commission used the language as quoted in plaintiff's petition, and that in said report said Interstate Commerce Commission reserved for further consideration the question of reparation when claims should thereafter be presented; but defendant avers that no specific claims of damage were presented or filed with the Interstate Commerce Commission by any shipper or other party claiming to be damaged, and that the aforesaid report and decision made by said Interstate Commerce Commission upon complaint of the Cattle Raisers' Association, and its order fixing a maximum rate effective November 17, 1908, is wholly irrelevant and immaterial and without force or effect in this controversy; and that the order of the Interstate Commerce Commission awarding damages and reparation was made without jurisdiction and authority, and is therefore void.

## V

Defendant avers that no proof was offered to the Interstate Commerce Commission that the parties named in said Appendix A were the consignors or owners of cattle [fol. 621] shipped, or that said parties paid the rate of freight named in said Appendix A, or any rate of freight, and alleges that the order of reparation as against this defendant was made arbitrarily, capriciously, and without evidence to support the same, and it therefore denies that said parties were owners or shippers, or that they were damaged in the amounts named in said appendix, or in any amount, and it denies that the rates charged by the defend-

ant were unjust or unreasonable by the amount shown in said appendix, or by any amount.

## VI

Defendant denies that the facts as found by the Interstate Commerce Commission in its report and opinion were or are true or correct; and denies that plaintiff, as Secretary of the Cattle Raisers' Association of Texas, or his predecessor, in due time or in accordance with law, filed, or caused to be filed, with said Interstate Commerce Commission, for or on account of the shippers, or on their own account as assignees, their petitions or claims for reparation for the amounts claimed to be unlawful charges; and denies that the claims or the rights of the owners of cattle as shippers, or as consignors, were duly or legally assigned to the plaintiff herein, or that he has been or is the legal or equitable owner or holder of any assignment, or entitled to have or recover damages resulting to shippers by reason of anything in said petition alleged; and denies that the plaintiff was entitled to have said order of said Interstate Commerce Commission made in his behalf; but on the contrary, defendant avers that said order was beyond the power of said Interstate Commerce Commission to make, and is therefore void.

Defendant admits that the said order of said Interstate Commerce Commission attached to plaintiff's petition herein, was served upon it, and admits that though requested to pay the claim of the petitioner, it has refused, and still refuses, to pay the same or any part thereof; but defendant denies that it is liable to the plaintiff in the amount claimed, or in any amount.

Wherefore, having fully answered the first count of plaintiff's petition, defendant asks to be discharged with its costs.

For answer to the second count of plaintiff's petition, defendant states:

## I

Defendant denies that on or about March 3, 1903, or at any other time, it combined or conspired with other carriers to impose upon shippers unreasonable rates of freight on

[fol. 622] shipments of live stock, and denies that the rates referred to in the petition were unreasonable.

Defendant further denies that it was a party to any combination or conspiracy, on or about March 3, 1903, or at any other time, to establish or publish freight rates on cattle or other live stock, or on other commodities, by joint tariffs of rates, or otherwise.

Defendant further denies that it, in combination and conspiracy with other carriers, put into effect or maintained the rates referred to in the petition in restraint of interstate commerce, thereby eliminating competition, as alleged in the petition, and denies that the advance in rates on live stock established by it and referred to in the petition were unjust, unreasonable or unlawful, or in unlawful restraint of interstate commerce, or that the same were continued in force by the defendant by combination or conspiracy with other carriers.

Defendant avers that no proof was offered to the Interstate Commerce Commission that the parties named in Appendix A attached to the petition were the consignors or owners of the cattle shipped, or that said parties paid the rate of freight named in said Appendix A, or any rate of freight, and that the order of reparation as against this defendant made by said Interstate Commerce Commission was made arbitrarily, capriciously and without evidence to support the same, and defendant therefore denies that said parties were the owners or shippers of the cattle shipped, or that said parties made said shipments, and denies that said parties were damaged in their business and property to the extent set out in said petition, or to any extent, and denies that the rates of freight charged by the defendant were unlawful; and denies that said consignors or owners assigned their alleged claims for damages to the plaintiff herein; and denies that plaintiff is entitled to all the rights of said parties; and denies that the plaintiff has been damaged in his business or property, or otherwise, in any amount; and denies that the defendant is liable to the plaintiff in any amount.

Defendant denies that the shippers or owners, or other parties mentioned in the petition, were damaged, or that they are entitled to treble damages, and denies that the plaintiff as assignee or otherwise is entitled to recover any damages as alleged in the petition.

[fol. 623] Wherefore, having fully answered said second count, defendant asks to be discharged with its costs.

(Signed) E. T. Miller, A. E. Haid, Attorneys for Defendant.

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DEFT. EX. 6b

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
EASTERN DIVISION OF THE EASTERN DISTRICT OF MISSOURI

No. 4393

E. B. SPILLER, Plaintiff,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

Reply

Now comes the plaintiff and for reply to the answer of the defendant herein denies each and every allegation of new matter therein contained.

(Signed) Cowan & Burney, James A. Seddon, Attorneys for the Plaintiff.

---

Mr. Miller: We next offer in evidence the Special Master's report of the receivers' first bi-monthly report in this case, dated June 29, 1913, with the exhibit thereto attached, the exhibit showing the receipts and disbursements for the period May 28 to 31, 1913, and for the month of June, 1913.

The Master: That is the final report, isn't it?

Mr. Murphy: No. That is the first bi-monthly report. What is the purpose of this offer, Mr. Miller?

Mr. Miller: It shows, among other things, the debts of the railroad company for material, supplies, labor, wages, etc. due at the time of the appointment of the receivers. I am offering it for that purpose.

Mr. Murphy: We object to the offer for the reason that it is wholly immaterial, doesn't tend to prove or disprove any issues in this case.

The Master: It will be admitted subject to the objection.

To which ruling of the Master the interveners then and there duly excepted and still except.

[fol. 624] Said paper was offered as Df't Exhibit 7, and same is in words and figures as follows, to-wit:

Deft. Ex. 7 omitted here as same is identical with Intervener's Ex. 17d (First Bimonthly report.)

Mr. Miller: We next offer in evidence the report of the receivers addressed to the Special Master dated February 18, 1914, and filed in the Clerk's office of the court March 12, 1914, for all purposes, and call attention particularly to that portion of the report showing the payment by the receivers of preferred claims against the railroad company aggregating \$2,229,950,047, and ask that it be marked Exhibit 8.

Mr. Leahy: Why offer the whole document to show the aggregate amount?

Mr. Miller: It is a very small document, only about two or three pages, and it includes a number of other things that were also paid. I am calling attention particularly to preferred claims.

Mr. Murphy: We object to this offer for the following reasons: First, because the report referred to addressed to the Master as aforesaid is wholly immaterial and irrelevant, doesn't prove or tend to prove any issue in this case. Second, because the recitals therein relative to the payment of preferred claims are so indefinite as not to indicate the character of the claims paid.

The Master: It will be taken subject to the objection.

To which ruling of the Master the intervenors then and there duly expected and still except.

Said paper above described offered as Defendant's Exhibit 8 is in words and figures as follows, to-wit:

DEFT. EX. 8

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF  
MISSOURI

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,  
Defendant

Report of Special Master on Receivers' First Report, Covering Their Operations under Order Number 51, as to Their Receipts and Disbursements on Account of Receivers' Certificates

The Receivers in the above entitled cause, under the authority and requirements of Order No. 51 entered herein [fol. 625] dated November 13, 1913, having filed in the office of the Master herein their first report of their operations under Order No. 51 as to their receipts and disbursements on account of Receivers' Certificates, I respectfully report as follows:

I have examined their report, which is hereto annexed and made a part hereof, together with the accounts and business of the Receivers appertaining to the Receivers' Certificates and the payment of preferential claims authorized to be paid from the proceeds thereof, as the same are recorded in the books and vouchers of the Receivers, and I find that the report hereto annexed is correct.

Respectfully submitted.

(Signed) Thomas T. Fauntleroy, Special Master.

St. Louis, Missouri, March 12, 1914.

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF  
MISSOURI

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Defendant

Thos. T. Fauntleroy, Esq., Special Master, St. Louis.

SIR: The undersigned Receivers of the property of the St. Louis and San Francisco Railroad Company, in obedience to the terms of the order entered in this cause on the 13th day of November, 1913, do report:

That they did, during the month of January, 1914,

Sign \$3,000,000, face amount, of the Receivers' Certificates authorized by the order entered on the 27th day of October, 1913;

Submit to the Clerk of the Court and procure the counter-signature, by him or by one of his deputies, on \$2,500,000, face amount, of such certificates;

[fol. 626] Sell for cash \$1,568,000 of said certificates, to-wit:

On January 2, 1914, \$1,000,000 thereof @ 99 flat, producing .....	\$990,000 00
On January 14, 1914, \$500,000 thereof, @ 99 and accrued interest producing .....	496,000 00
On January 21, 1914 \$68,000 thereof, @ 99 and accrued interest, producing .....	67,535 33
Total proceeds of certificates sold .....	\$1,553,535 33
Use \$857,000 face amount, of said certificates, at rate of 99 flat,—say, as the equivalent in cash of .....	848,430 00
in paying preferred claims;	

That the aggregate face value of certificates so sold or used was \$2,425,000;

That the value so obtained by the Receivers for the said certificates, (including \$1,215.33 of accrued interest collected), was the sum of ..... \$2,401,965.33

That out of the fund so created they have liquidated and hold receipts of claimants, (whose claims had been first approved by you according to the terms of the order entered on November 13th, 1913, for payment as preferred claims), to the amount of \$2,229,950.47; out of which claims, however, the Receivers withheld the amount of certain counter-claims, amounting in the aggregate to \$114,476.06, so that the net charge to the fund so created was the sum of ..... 2,115,474.41

That the unexpended balance of the fund so created, at close of business on January 31st, 1914, was the sum of ..... \$286,490.92

That the said balance was held in separate account at the following authorized depositories of the Receivers, to-wit:

In the

National Bank of Commerce in St. Louis	\$66,813.63
Third National Bank of St. Louis.....	71,092.34
Mechanics-American National Bank of St. Louis .....	68,297.85
St. Louis Union Trust Company.....	80,287.10
	<u>\$286,490.92</u>

That the said banks have allowed interest on daily balances during January, 1914, to the credit of the special accounts in which the proceeds of Receivers' certificates were segregated, the following sums, to-wit:

Mechanics-American National Bank, the sum of .....	\$285.97
National Bank of Commerce in St. Louis, the sum of .....	278.35
Third National Bank in St. Louis, the sum of .....	302.57
St. Louis Union Trust Company, the sum of .....	322.58
	<u>\$1,189.47</u>

[fol. 627] That the Receivers have taken into their current funds, i. e., transferred out of the segregated accounts, the amount of accrued interest collected on certificates sold, say \$1,215.33, and the amount of interest allowed by the banks as above, say \$1,189.47;

That at close of business on January 31st, 1914, the Receivers held as yet unapplied \$500,000, face amount, of certificates not countersigned by the Clerk of the Court or any of his deputies, and \$75,000 of certificates countersigned by the Clerk and ready for use.

Respectfully, James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers, by (Signed) F. H. Hamilton,  
Their Treasurer.

St. Louis, Feby. 18, 1914.

---

Mr. Miller: The Special Master allowed the claim to the Corporation Commission of Oklahoma for Oklahoma overcharges in the sum of \$76,627.35, and like claims that had been paid by the surety on the railroad bond in that case in the sum of \$12,124.51, making the total amount of overcharges allowed by the Special Master in the Love intervention \$88,751.86. That is shown in the Love case and also in the report of the Special Master in the Love case. I ask if you will agree that those amounts were allowed by the Special Master in the Love case?

Mr. Murphy: Subject to the objection that they are irrelevant and immaterial.

Mr. Miller stated (p. 63) that there were filed with the Special Master under the interlocutory decree, the following claims for overcharges against the railroad company, all of which were pending before the Interstate Commerce Commission on application for reparation: Adams Stave Company, \$6,130.65; Cudahy Packing Company, \$198.84; Choctaw Lumber Company, \$6,826.29; Gulf Refining Company, \$418.06; Pittsburg Plate Glass Company, \$3,078.63; Swift & Company, \$1,909.59, and \$120.30; Texas, Oklahoma and Eastern Railroad Company, \$2,694.04, making a total of \$20,976.40. These claims were all allowed by the Special Master in such sums, if any, as the Interstate Commerce Commission should order reparation thereon, and in the

event reparation was denied, the claims were to be dismissed; they were all allowed as general unsecured claims; since that time certain of these claims have been further allowed, reparation having been ordered, as in the case of [fol. 628] the claim of the Pittsburg Plate Glass Company, reparation order for \$3,076.21 with interest at six per cent from March 26, 1913; in the Swift & Company claim, for \$573.62, six per cent interest from July 1, 1912; \$115.48 on the other claim of Swift & Company; the Texas, Oklahoma and Eastern Railroad Company claim being allowed for \$2,284.84.

Mr. Miller: Now Mr. Murphy I have the report of the Special Master on those various claims, and I don't want to enumber the record with it if you will admit that, subject to your objection, the statement which I have made is a correct statement.

In explanation of said statement, counsel for the defendant and the St. Louis-San Francisco Railway Company, stated that the claims aforesaid, at the time of the appointment of the receivers, were pending on applications made to the Interstate Commerce Commission, for orders of reparation; that was true of the Texas, Oklahoma, and Eastern Railroad Company's claims, which were, as counsel recalled it, made against the Frisco for the Frisco's proportion of overcharges that had been assessed on through movement originating on the T., O., & E. It was either that or it was the [*the*] Frisco's T., O., & E. claim under the tap line cases, as the initial carriers' claim against the Frisco. It was one or the other. (P. 64.)

By "tap line cases," counsel meant those cases where short lines—lumber lines usually—claimed a certain division out of the through movement. He was not certain whether they fell in that class, or not; they were not of very much importance either way. Counsel for the defendant and the St. Louis-San Francisco Railway Company stated that in those claims filed before the Special Master, no defense was made by the defendants and by the receiver, that the Interstate Commerce Act required the claims to proceed in an action at law. In one or two, the parties appeared here under the oral agreement that an order should be made, that if the Master allowed the claims, they should be for the amount fixed by the Interstate Com-

merce Commission. No claim was made that they were prior in equity to claims of bondholders; they were allowed as claims of general creditors, and filed as general claims. None were paid as preferred claims. Counsel's understanding was that none of the claimants received the full amount of his claims in cash. Some of the claimants accepted the checks of the Special Master, under the order of distribution, which was at the rate of seven seventy per thousand, face value.

[fol. 629] The Master: What is the bearing on this case, that it exhausted the trust fund?

Mr. Miller: The principal reason that I am offering this testimony is to show that other parties similarly situated as the intervenors came in under the interlocutory decree and filed their claims and had them protected, just as the intervenors were insisting the other day that they were doing everything they could, and therefore were not guilty of laches in respect to the claim. I am rebutting that testimony, and the further conclusion also that comes from it that to allow these claims now would discriminate against these parties who did file their claims pursuant to the order.

The Master: Well, it would discriminate in their favor.

Mr. Miller: In favor of the present parties?

The Master: No, of the other parties. If these claims had been allowed, it would have been less pro rata than the amount of money received by the other claimants.

Mr. Miller: Yes, but the other claimant accepting seven dollars on the thousand is a great disadvantage to these people who did not file their claims and are seeking to recover dollar for dollar.

The Master: Well, the other people wouldn't have been prejudiced by these claimants not coming in, because the others would have gotten more than they would have received if these claimants had come in and had been entitled to their pro rata.

Mr. Miller: If they had been allowed to come in as general creditors that would have been true, but it is not necessary to recover preferential claims.

The Master: Well, how would that hurt the other people?

Mr. Miller: We are taking the position that these other people came in under the order requiring them all to come in and were diligent. They get only a certain amount. The

present claimants that stay out of the case now come in and ignore the order to file their claims and seek to get more than the other people did who complied with the order of court. It bears on that and on the question of laches, lack of diligence.

[fol. 630] Mr. Murphy: Now, Mr. Miller, I presume that your question to me is whether or not we concede the fact under the conditions you stated is correct?

Mr. Miller: That is what I submit the statement for.

Mr. Murphy: As to admitting the fact, subject to objection, we assume that that is true, but we cannot accept the conclusion that you drew from your facts which you recited, we cannot agree to that.

Mr. Miller: I don't want you to. I don't ask you to.

Mr. Murphy: With that understanding, our concession may go in the record.

The Master: You are simply admitting the correctness of the facts?

Mr. Murphy: Yes. Now, we object to the offer of those facts and to the facts for the reason that they are wholly incompetent, irrelevant and immaterial. What other people did or failed to do could have no bearing upon our case. It appears from the statement that these claimants filed claims as general creditors and asked for no priority. Of course, their failure in that respect couldn't affect our case. Any understanding that the defendant or the receivers through their counsel might have had with these claimants couldn't have any bearing upon our case. The fact that the railroad company and the receivers raised no defenses in that case or in those cases that were available could not justify any claim that they would not have raised them as defenses to our claim. The Act to Regulate Commerce recites what the claimants from whom overcharges have been illegally exacted must do. We followed that remedy prescribed. We followed it in the face of a continuous and bitter contest made after the order of reparation was issued from December, 1914, to June 6, 1920, a contest made by the attorneys for the receivers of the defendant railroad company, and a contest made by the attorneys for the St. Louis-Francisco Railway Company after November, I think it is, 1916. We think the offer is wholly immaterial, irrelevant and incompetent, does not prove or tend to prove any issue in the case.

The Master: That offer will be admitted subject to the objection.

To which ruling of the Master the Interveners then and there duly excepted.

[fol. 631] At this point, counsel for defendant and the St. Louis-San Francisco Railway Company, stated in regard to a statement showing the proceeds of bonds issued by the old company, the railroad company, from 1908 to 1913, which he offered in evidence as follows:

The statement shows the proceeds of bonds that were issued under our general lien and our refunding mortgages. It is merely for the purpose of showing how much money the railroad company turned into its treasury as the proceeds of the sale of its bonds between those dates. (P. 69) Before the issue of these securities during certain periods, permits had to be secured from the Public Service Commission of Missouri, and from the Interstate Commerce Commission, but not from the Public Service Commission, subsequent to 1913. Whatever authority was necessary from the Interstate Commerce Commission, was secured. The statement was filed merely for the purpose of showing how the proceeds from the sale of bonds was used; that they went into the treasury; they were used for those purposes, but the proceeds were used for other purposes, also in operating the railroad; large quantities were used for operating the railroad.

To which statement, counsel for intervenors objected on the ground that it is wholly immaterial and irrelevant, and does not prove or tend to prove any issue in the case, and on the ground that it is incompetent, without showing the purposes for which the proceeds from the sale of bonds were used.

Which objections was by the Master overruled; to which ruling of the Master, counsel for intervenors duly excepted, and continue to except. (P. 70)

Said statement offered as Defendant's Exhibit 9, is in words and figures as follows, to-wit:

## DFT's Ex. 9

The Kansas City, Fort Scott &amp; Memphis Railway Company

Refunding Mortgage 4% Bonds Sold During Period Nov.  
17, 1908, to May 27, 1913, Incl.

Date	Price
June 21, 1909 .....	\$162,525 00
" ..	
" ..	
" ..	
July 1, 1909 .....	165,000 00
June 23, 1910 .....	93,750 00
[fol. 632] June 24, 1910 .....	475,500 00
June 27, 1910 .....	232,500 00
Mar. 20, 1911 .....	27,900 00
" ..	
" ..	747,100 00
Apr. 11, 1911 .....	533,200 00
May 4, 1911 .....	465,000 00
May 8, 1911 .....	310,000 00
Nov. 21, 1911 .....	209,475 00
Total .....	3,421,950 00

St. Louis and San Francisco R. R. Co.

Secured Gold Notes Issued Between Nov. 17, 1908, and May  
27, 1913

Date	Title	Maturity date	Proceeds
3/1/1910	St. L. & S. F. R. R. Three Year 5% Secured Gold Notes of 1913 .....	3/1/1913	7,480,000 00
6/1/1911	St. L. & S. F. R. R. Two Year 5% Secured Gold Notes .....	6/1/1913	2,205,000 00
9/3/1912	St. L. & S. F. R. R. Two Year 6% Se- cured Gold Notes ....	9/1/1914	1,141,000 00 1,034,000 00
			2,444,000 00

Office of Valuation Accountant, St. Louis, Mo., Nov. 25, 1921

St. Louis and San Francisco Railroad Company

General Lien 15-20 Year Gold Bonds Sold Between Nov.  
17, 1908, and May 27, 1913

Date sold	Proceeds
Dec. 31, 1908	\$9,600,000.00
Jan. 1909	2,400,000.00
" "	3,200,000.00
Feb. "	800,000.00
May "	8,000,000.00
June "	4,075,000.00
August "	6,262,500.00
[fol. 633] October 1909	417,500.00
January 1910	43,220.00
February "	417,500.00
April "	2,505,000.00
October "	352,370.00
November "	1,317,630.00
January 1911	1,660,000.00
" "	1,263,750.00
April "	5,897,500.00
December "	2,170,050.00
March 1912	2,535,000.00
April 1913	780,000.00
May 2, "	780,000.00
" 3, "	390,000.00
" 15, "	390,000.00
	<hr/> 55,257,220.00

Accts' 1st report - May 18 to June 30 1913

Shippie & car price balances

Prior to Reimburse During balance total

395,374.21 14,377.15 399,751.36

396,986.58 32,724.63 429,041.21

Receipts

Disbursements

Accts' 2nd report - July 1 to Aug 31 1913

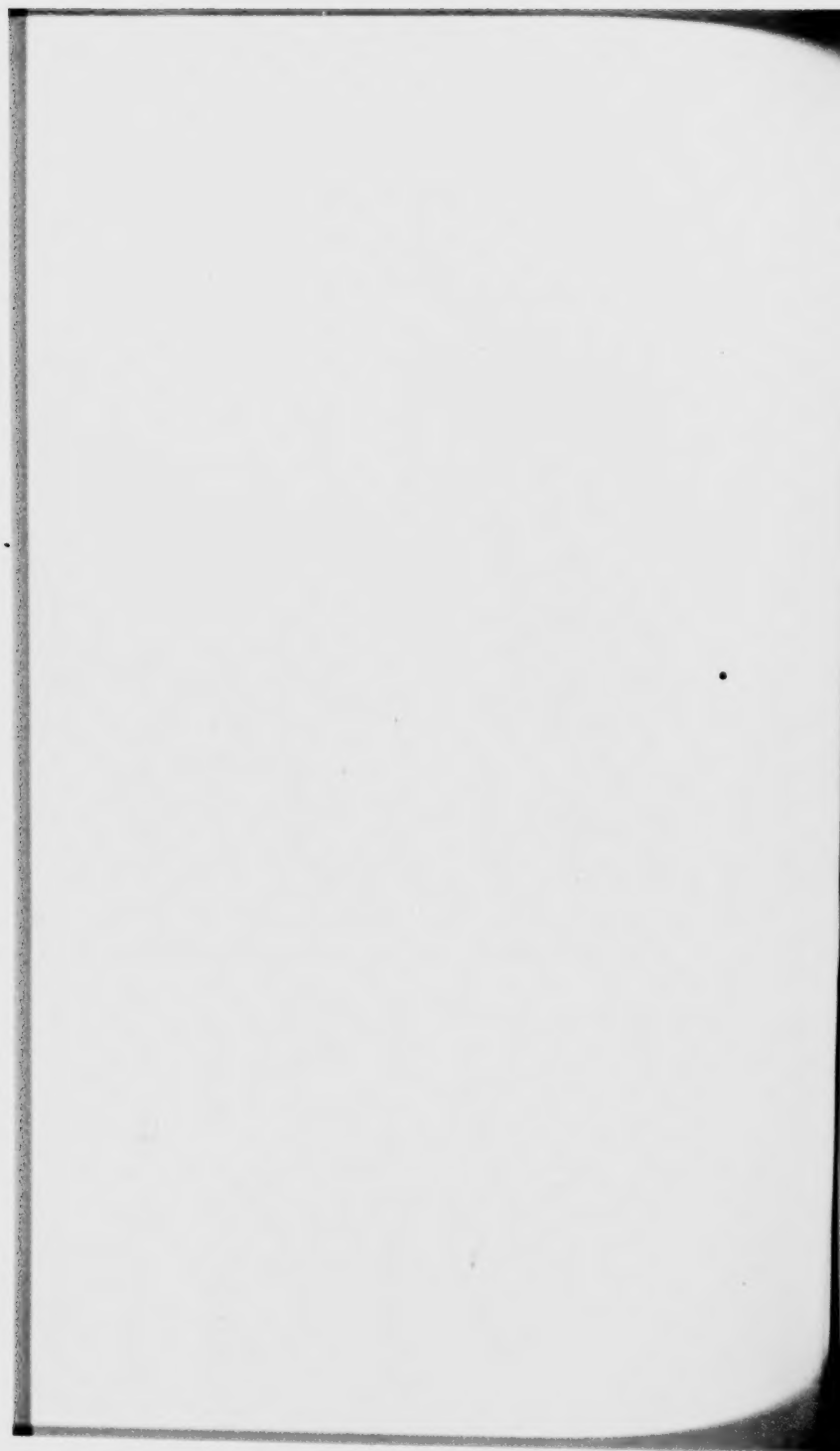
Receipts

Disbursements

299,453.65 613,953.36 913,907.20

191,198.71 495,457.48 686,658.19

OK  
E. J. M. M.



Office of Valuation Accountant, St. Louis, Mo., Nov. 25,  
1921

St. Louis & San Francisco Railroad Company

Refunding Mortgage 4% Bonds Sold During Period Nov.  
17, 1908, to May 27, 1913, Incl.

Date	Proceeds
1909	
July .....	\$853,370.00
1910	
June .....	60,840.00
	390,000.00
1911	
June .....	499,957.50
1912	
June .....	257,180.00
Total .....	<u>\$2,061,347.50</u>

Mr. Miller: I next offer in evidence any analysis of the items shown in the record of the receiver from May 28, 1913, to June 10, 1913, covering their first report—

[fol. 634] Mr. Murphy: With the understanding that in addition to the objection of relevancy and immateriality, we can introduce any other objection that we may desire to make after you have furnished us with a copy of it, it will be all right.

The Master: Admitted subject to objection.

To which ruling of the Master, the interveners then and there duly excepted and still except. (P. 72.)

Said paper offered as defendant's Exhibit 10, is in words and figures, as follows, to-wit:

(Here follows Exhibit 10, marked side folio page 635)

[fol. 636] Mr. Miller: I believe that is all that we have to offer. (P. 72.)

## Interveners' Rebuttal Evidence

Interveners offered the following evidence in rebuttal:

Interveners at this point offered in evidence the statement showing the net income of the railroad Company from June, 1906, to the date of appointment of the receivers.

Mr. Miller: We make the same objections to that as are contained in our answers.

The Master: The statement will be admitted subject to objection. To which ruling of the Master the defendant then and there duly excepted and still excepts. (P. 72.)

Said statement offered as interveners' Exhibit 21, is identical with interveners' Exhibit 18a, and is, therefore, omitted here.

At this point interveners offered in evidence the order confirming the sale, with the Exhibit thereto attached.

Mr. Miller: That is objected to for the same reasons.

The Master: Taken subject to objections.

To which ruling of the Master the defendant then and there duly excepted and still except. (p. 73.)

Said document offered as interveners' Exhibit 22, is in words and figures, as follows, to-wit:

## Ex. 22

AT A TERM OF THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DIVISION OF THE EASTERN DISTRICT OF  
MISSOURI, IN THE EIGHTH JUDICIAL CIRCUIT, IN THE CITY  
OF ST. LOUIS, ON THE 29TH DAY OF AUGUST, 1916

Present: Hon. Walter H. Sanborn, United States Circuit  
Judge.

[fol. 637]

No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,  
against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Defendant

## No. 4174. In Equity

NORTH AMERICAN COMPANY, Complainant,  
against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Defendant

## No. 4290. In Equity

RAIL JOINT COMPANY, Complainant,  
against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Defendant

## No. 4304. In Equity

BANKERS TRUST COMPANY and NEILL A. McMILLAN, as Trustees, Complainants,  
against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Defendant

## No. 4334. In Equity

GUARANTY TRUST COMPANY OF NEW YORK, as Trustee, Complainant,  
against

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, BANKERS TRUST COMPANY, and NEILL A. McMILLAN, Defendants

## Consolidated Cause Final

## Order Confirming Sale—No. 181-C

This cause came on further to be heard on the petition of Basil B. Elmer and William P. Philips dated July 19, 1916, and on the Special Master's Report of Sale filed herein July 19, 1916, and on all other proceedings in the above-entitled cause, and was argued by counsel, and thereupon, upon consideration thereof, the Court being fully advised in the premises, finds, adjudges, and decrees as follows:

I. The Special Master appointed to be the Special Master referred to in the Final Decree made and entered herein

March 31, 1916, has fully complied with all the directions in said Final Decree contained as to the sale of the property of the defendant Railroad Company.

II. The sale of said property held July 19, 1916, was held in all respects as provided by said Final Decree, and at said sale the Special Master sold at public auction to Basil B. Elmer and William P. Philips, as joint tenants and not as tenants in common, all property of every character and description of the defendant Railroad Company, including all property of every kind and description acquired or held by the Receivers in the above entitled cause, in parcels and for prices as follows, the bid of said Basil B. Elmer [fol. 638] and William P. Philips for the respective parcels being, in each case, the highest bid for said parcel:

(1) The property embraced in the Trust Agreement of June 1, 1911, securing the Two Year Five Per Cent Secured Gold Notes of the defendant Railroad Company, separately and as an entirety, but subject to said Trust Agreement, for the sum of \$10;

(2) The property embraced in the Trust Agreement of September 3, 1912, securing the Two Year Six Per Cent Secured Gold Notes of the defendant Railroad Company, separately and as an entirety, but subject to said Trust Agreement, for the sum of \$10;

(3) The securities pledged to secure the promissory note of the defendant Railroad Company held by the complainant North American Company, separately and as an entirety, for the sum of \$600,000;

(4) All the remaining property of the defendant Railroad Company, as an entirety, for the sum of \$45,700,200.

III. Said Basil B. Elmer and William P. Philips have duly assigned to St. Louis-San Francisco Railway Company, a corporation duly organized and existing under the laws of Missouri, all their right, title and interest in and to the property described in the form of deed hereto annexed and marked Exhibit A, sold to them as aforesaid, including their right to receive a deed or deeds or other instruments of transfer and conveyance thereof as provided in said Final Decree.

IV. There has been made under or pursuant to, or in connection with, the Plan and Agreement dated November 1, 1915, for the Reorganization of St. Louis and San Francisco Railroad Company, a copy of which has been filed herein with the Special Master's Report of Sale, to all creditors of the defendant Railroad Company who have presented their claims in accordance with the orders of this Court in this cause, or in any constituent cause, and who have claims subordinate in lien and inferior in equity to the Refunding Mortgage of the defendant Railroad Company described in said Final Decree, or to the General Lien Mortgage of the defendant Railroad Company described in said Final Decree, a fair and timely offer of cash or a fair and timely offer of participation in St. Louis-San [fol. 639] Francisco Railway Company, a corporation organized for the purpose of becoming the owner, through a sale under said Final Decree of a part of the property specified in Articles Twenty-sixth and Twenty-seventh of said Final Decree.

It is therefore ordered, adjudged and decreed as follows:

First. The Special Master's Report of Sale filed herein July 19, 1916, is in all things confirmed and the sale therein reported, namely: the sale to Basil B. Elmer and William P. Philips of all property of every character and description of the defendant Railroad Company, including all property of every kind and description acquired or held by the Receivers in the above entitled cause, in parcels and for prices as follows:

(1) The property embraced in the Trust Agreement of June 1, 1911, securing the Two Year Five Per Cent. Secured Gold Notes of the defendant Railroad Company, separately and as an entirety, but subject to said Trust Agreement, for the sum of \$10;

(2) The property embraced in the Trust Agreement of September 3, 1912, securing the Two Year Six Per Cent. Secured Gold Notes of the defendant Railroad Company, separately and as an entirety, but subject to said Trust Agreement, for the sum of \$10;

(3) The securities pledged to secure the promissory note of the defendant Railroad Company held by the com-

plainant North American Company, separately and as an entirety, for the sum of \$600,000;

(4) All the remaining property of the defendant Railroad Company, as an entirety, for the sum of \$45,700,200, is made final and absolute, subject, however, to all the terms and conditions of said Final Decree and to all the reservations to the purchasers and to their assigns and to this Court in said Final Decree contained.

Second. The Special Master is directed, upon the payment and settlement of the purchase price, or making provision therefor, as hereinafter in this order provided, or as may be permitted by any other order or any other decree made in this cause, to execute and deliver to St. Louis San-Francisco Railway Company a deed of the property described in the form of deed hereto annexed and marked Exhibit A, substantially in said form, which is approved by this Court, and to execute and deliver to Basil B. Elmer [fol. 640] and William P. Philips, as joint tenants and not as tenants in common, a deed of the property described in the form of deed hereto annexed and marked Exhibit B, substantially in said form, which is approved by this Court; and the defendant Railroad Company, the Receivers herein, Guaranty Trust Company of New York, as Trustee under the Refunding Mortgage of the defendant Railroad Company, and Bankers Trust Company and Neill A. McMillan, as Trustees under the General Lien Mortgage of the defendant Railroad Company, are directed to join with the Special Master in the execution and delivery of a deed to St. Louis-San Francisco Railway Company substantially in the form of said deed Exhibit A, or, if said St. Louis-San Francisco Railway Company shall so request, to execute and deliver to said St. Louis-San Francisco Railway Company separate deeds or releases of all their right, title and interest of, in and to the property so conveyed, assigned and transferred to said St. Louis-San Francisco Railway Company by the Special Master; and the defendant Railroad Company, the Receivers herein and Bankers Trust Company and Neill A. McMillan, as Trustees under the General Lien Mortgage of the defendant Railroad Company, are directed to join with the Special Master in the execution and delivery of a deed to Basil B. Elmer and

William P. Philips, as joint tenants and not as tenants in common substantially in the form of said deed Exhibit B, or, if said Basil B. Elmer and William P. Philips shall so request, to execute and deliver to said Basil B. Elmer and William P. Philips, as joint tenants and not as tenants in common, separate deeds or releases of all their right, title and interest of, in and to said property so conveyed, assigned and transferred to said Basil B. Elmer and William P. Philips by the Special Master. The trustees in whose names is held any of the real estate described in said form of deed Exhibit B are authorized and directed to execute and deliver to said Basil B. Elmer and William P. Philips, declarations that they hold said real estate as trustees for said Basil B. Elmer and William P. Philips, as joint tenants and not as tenants in common.

Third. Upon the production of said respective deeds, the grantee or grantees therein named shall be let into the possession of the property thereby conveyed or transferred, and shall after such delivery of possession, hold, possess and enjoy the property so conveyed and transferred, and every part and parcel thereof, free from any trust or lien [fol. 641] imposed thereon by the Refunding Mortgage of the defendant Railroad Company, and free from any trust or lien imposed thereon by the General Lien Mortgage of the defendant Railroad Company, and free from all claims, rights, interest or equity of redemption, in or to the same by or of the defendant Railroad Company, its successors and assigns, and by or of the creditors and stockholders of the defendant Railroad Company, and by or of all persons claiming by, under or through the defendant Railroad Company, its creditors or its stockholders, subject, however, to all the terms and conditions of said Final Decree and to all the reservations to the purchasers and to their assigns and to this Court in said Final Decree contained.

Fourth. There shall be credited upon the purchase price of the securities pledged to secure the promissory note of the defendant Railroad Company held by the complainant North American Company, the sum of \$100,000, deposited with the Special Master by said Basil B. Elmer and William P. Philips, by certified check, as a pledge that they would make good their bid for said securities; and there shall be credited upon the purchase price of the property

mentioned in subdivision (4) of Article First hereof, the sum of \$150,000 deposited with the Special Master by said Basil B. Elmer and William P. Philips, by certified check, as a pledge that they would make good their bid for said property, and also the distributive share, out of the proceeds of sale, of the Refunding Mortgage Bonds and General Lien Mortgage Bonds and appurtenant coupons held subject to the order of the Special Master pursuant to the certificates of Central Trust Company of New York and Bankers Trust Company, both dated July 14, 1916, deposited by said Basil B. Elmer and William P. Philips with the Special Master, as stated in his Report of Sale. In advance of the delivery of said deeds, and within sixty days from the date of the entry of this order, or within such additional period as this Court may hereafter by its order or decree permit, said Basil B. Elmer and William P. Philips or said St. Louis-San Francisco Railway Company shall pay or cause to be paid in cash on account of the purchase price of the property sold to said Basil B. Elmer and William P. Philips, the following sums:

(1) the purchase price of the property embraced in the Trust Agreement of June 1, 1911, securing the Two Year Five Per Cent. Secured Gold Notes of the defendant Railroad Company, to-wit; the sum of \$10;

[fol. 642] (2) the purchase price of the property embraced in the Trust Agreement of September 3, 1912, securing the Two Year Six Per Cent. Secured Gold Notes of the defendant Railroad Company, to-wit: the sum of \$10; and

(3) the unpaid balance of the purchase price of the securities pledged to secure the promissory note of the defendant, Railroad Company held by the complainant North American Company, to-wit: the sum of \$500,000.

and shall provide for the payment of the remainder of the purchase price of the property mentioned in subdivision (4) of Article First hereof by turning over to the Special Master, to be cancelled or credited as provided in said Final Decree, bonds and coupons to be paid out of the proceeds of sale on distribution thereof, as set forth in said Final Decree, to at least the following amounts in addition to the bonds specified in the certificates of Central Trust Com-

pany of New York and Bankers Trust Company, both dated July 14, 1916, heretofore deposited with the Special Master:

Refunding Mortgage Bonds, \$35,000,000, principal amount;  
General Lien Mortgage Bonds, \$35,000,000, principal amount

Said bonds and coupons shall be in bearer form or accompanied by proper transfers to the Special Master. In lieu of turning over to the Special Master said bonds, the Special Master may accept the certificate of any national bank or trust company in the City of New York or the City of St. Louis acceptable to the Special Master, that it holds subject to his order bonds of the amount and character therein specified, and, and if in bearer form, accompanied by the coupons therein stated. No further payment in cash shall be required on account of the purchase price of any of said property unless this Court shall so require, but this Court reserves jurisdiction from time to time to require such further payment or payments in cash on account of said purchase price as this Court may direct, and this Court reserves a paramount lien and charge upon the property to be conveyed as in this order provided, for the payment into this Court in cash of the unpaid part of the purchase price.

Fifth. Upon the execution and delivery by the Special Master to St. Louis-San Francisco Railway Company of a deed substantially in the form of said deed Exhibit A, and the execution and delivery by St. Louis-San Francisco Railway Company to the Special Master of a counterpart thereof, all obligations and liabilities of Basil B. Elmer and [fol. 643] William P. Phillips on account of the purchase of any of the property of the defendant Railroad Company or by reason of their bid at said sale under said Final Decree or the acceptance of said bid, shall forthwith cease and determine and said Basil B. Elmer and William P. Philips shall individually be discharged from all such obligations and liabilities.

Sixth. The bonds and coupons held subject to the order of the Special Master pursuant to the certificates of Central Trust Company of New York and Bankers Trust Com-

pany, both dated July 14, 1916, deposited by said Basil B. Elmer and William P. Philips with the Special Master as stated in his said Report of Sale, and the bonds and coupons represented by any certificates which may be accepted by the Special Master pursuant to the provisions of Article Fourth of this order, shall remain with the banks or trust companies by whom such bonds and coupons are held, to abide the further order of this Court; and when the amounts payable out of the proceeds of sale upon the Refunding Bonds and appurtenant coupons, and upon the General Lien Bonds and appurtenant coupons, shall have been determined as in said Final Decree provided, the Special Master shall give notice of the time and place where said bonds and coupons may be presented for payment as in said Final Decree provided, and all such bonds and coupons presented for payment shall be stamped with a notation of the credit or payment thereon of the amount so payable and such bonds and coupons shall thereafter be delivered to St. Louis-San Francisco Railway Company and the other parties presenting the same.

Seventh. All questions relating to amounts of compensation, charges, allowances, costs, disbursements and expenses, referred to in said Final Decree, are hereby respectively reserved by this Court for further hearing and determination, and all payments to be made therefor, unless agreed upon by the parties in interest, shall hereafter be determined, fixed, allowed and settled by this Court, and all questions not hereby disposed of are reserved for future adjudication. Any party to this cause and any party to any of the separate causes consolidated into this cause and any party who has intervened in this cause or in any constituent cause, may at any time apply to this Court for further relief at the foot of this order.

Walter H. Sanborn, United States Circuit Judge.

[fol. 644]

#### EXHIBIT A

Indenture, dated September —, 1916, between Thomas T. Fauntleroy, as Special Master, appointed by an order entered in the consolidated cause hereinafter mentioned June 8, 1916, to be the Special Master referred to in the

Final Decree made and entered in said consolidated cause March 31, 1916 (hereinafter called the Special Master), party of the first part;

St. Louis and San Francisco Railroad Company, a corporation organized and existing under the laws of the State of Missouri (hereinafter called the Railroad Company), party of the first part;

James W. Lusk, William C. Nixon and William B. Biddle, as Receivers of the property of the Railroad company appointed in said consolidated cause (hereinafter called the Receivers), parties of the third part;

Guaranty Trust Company of New York, a corporation organized and existing under the laws of the State of New York, as trustee under the Refunding Mortgage of the Railroad Company dated June 20, 1901 (hereinafter called the Refunding Trustee), party of the Fourth part;

Bankers Trust Company, a corporation organized and existing under the laws of the State of New York, and Neill A. McMillan, a resident and citizen of the State of Missouri, as trustees under the General Lien Mortgage of the Railroad Company, dated August 27, 1907 (hereinafter called the General Lien Trustees), parties of the fifth part;

Basil B. Elmer and William P. Phillips (hereinafter called the Purchasers) parties of the sixth part; and

St. Louis-San Francisco Railway Company, a corporation organized and existing under the laws of the State of Missouri (hereinafter called the Railway Company) party of the seventh part.

Whereas in a certain consolidated cause pending in the District Court of the United States for the Eastern District of Missouri, Eastern Division, entitled "North American Company, Complainant, against St. Louis and San Francisco Railroad Company, Defendant, In Equity No. 4174, Consolidated Cause, Final," there was made and entered on March 31, 1916, a Final Decree, whereby, as amended, *nunc pro tunc* as of March 31, 1916, by an order entered in said consolidated cause May 15, 1916, among [fol. 645] other things, it was ordered, adjudged and decreed that all property of every character and description of the Railroad Company, including all property of every kind and description acquired or held by the Receivers in said consolidated cause, should be sold in the manner and

subject to the provisions in said Final Decree set forth, and that said sale should be made at the roundhouse, near the point where the mortgaged lines of railroad of the Railroad Company cross the line of Chouteau Avenue in the City of St. Louis in the State of Missouri upon the property to be sold, on a day and at an hour to be fixed by the Special Master, or as the Court might order, and that notice of the time and place and terms of sale, describing briefly the property to be sold, and referring to said Final Decree, should be published at least once a week for four successive weeks preceding the date of such sale, in a newspaper printed, regularly issued and having a circulation in the City of St. Louis, and State of Missouri, and in a newspaper published in the Borough of Manhattan, City of New York, State of New York; and

Whereas by said Final Decree it was also, among other things, ordered, adjudged and decreed that the Railroad Company, or some one in its behalf, should, within thirty days after the entry of said Final Decree pay or cause to be paid to Guaranty Trust Company of New York, as trustee, for the use and benefit of the holders of the outstanding Refunding Bonds of the Railroad Company, and of the coupons appertaining thereto which matured July 1, 1914, the sum of Seventy-four million, eight hundred and twenty-three thousand, one hundred and nine and  $74/100$  Dollars (\$74,823,107.74) in gold coin of the United States of America, with interest thereon at the rate of six per cent per annum from the date of the entry of said Final Decree to the date of payment, and that within the same time the Railroad Company, or some one in it behalf, should also pay or cause to be paid to Bankers Trust Company and Neill A. McMillan, as trustees, for the use and benefit of the holders of the outstanding General Lien Bonds of the Railroad Company, and of the coupons appertaining thereto which matured May 1, 1914, and November 1, 1914, respectively, the sum of Seventy-eight million, fifty-seven thousand dollars (\$78,057,000) in gold coin of the United States of America, with interest thereon at the rate of six per cent per annum, from the date of the entry of said Final Decree to the date of payment; and

[fol. 646] Whereas neither the Railroad Company nor anyone in its behalf has paid or caused to be paid either of

said sums or any sums, although more than thirty days have elapsed since the entry of said Final Decree; and

Whereas Thomas T. Fauntleroy was, by an order entered in said consolidated cause June 8, 1916, appointed to be the Special Master referred to in said Final Decree, and by said Final Decree was directed to make and conduct said sale and to execute a deed or deeds or other instrument or instruments of conveyance or assignment and transfer of the property sold to the purchaser or purchasers thereof, or his or their assigns, upon an order confirming such sale, and upon payment or settlement of the purchase price, or making provision therefor, as in said Final Decree provided, or as might be permitted by any order or other decree made in said consolidated cause; and

Whereas July 19, 1916, at twelve o'clock noon, was duly fixed by the Special Master as the day and hour for the said sale and notice of the time and place and terms of sale was duly given in accordance with the provisions of said Final Decree and in accordance with law; and

Whereas the Special Master on said July 19, 1916, at twelve o'clock, noon, at the round house near the point where the mortgaged lines of railroad of the Railroad Company cross the line of Chouteau Avenue in the City of St. Louis in the State of Missouri upon the property to be sold, pursuant to and in accordance with all the provisions of said Final Decree, sold at public auction to the Purchasers, as joint tenants and not as tenants in common, all property of every character and description of the Railroad Company, including all property of every kind and description acquired or held by the Receivers in said consolidated cause, in parcels and for prices as follows:

(1) The property embraced in the Collateral Trust Agreement of June 1, 1914, securing the Two Year Five Per Cent Secured Gold Notes of the Railroad Company, separately and as an entirety, for the sum of \$10,

(2) The property embraced in the Trust Agreement of September 3, 1912, securing the Two Year Six Per Cent Gold Notes of the Railroad Company, separately and as an entirety, for the sum of \$10,

(3) The securities pledged to secure the promissory note of the Railroad Company held by North American Com-

pany, separately and as an entirety, for the sum of \$600,000, and

[fol. 647] (4) All the remaining property of every character and description of the Railroad Company, as an entirety, for the sum of \$45,700,200,

the Purchasers being the highest bidders for all the various parcels of said property at said sale and having duly qualified as bidders thereat for each parcel in the manner provided in said Final Decree; and

Whereas the Special Master did after said sale and on or about July 19, 1916, make a report of said sale to the District Court of the United States for the Eastern Division of the Eastern District of Missouri and said report was duly filed in the office of the Clerk of said Court on said day; and

Whereas thereafter, by an order duly made and entered — —, 1916, by said District Court of the United States for the Eastern Division of the Eastern District of Missouri in said consolidated cause, hereinafter called the Order of Confirmation, said report was confirmed, and the sale to the Purchasers of all said property was made final and absolute, and said Court directed the manner in which the purchase price of each of said several parcels should be paid or provided for; and

Whereas that portion of the purchase price of each of said parcels required to be paid in advance of the delivery of instruments of conveyance and transfer has been so paid or settled or provision for the payment thereof has been made in manner approved by said Court, all as by said Order of Confirmation provided; and

Whereas the Purchasers have duly assigned, transferred and set over unto the Railway Company, party hereto of the seventh part, all of their right, title and interest in and to the property hereinafter described and sold to them as aforesaid, including their right to receive a deed or deeds or other instrument or instruments of conveyance, assignment and transfer of said property as provided in said Final Decree; and

Whereas by said Order of Confirmation, the form of this indenture was approved by said Court and the Special Master, the Railroad Company, the Receivers, the Refunding

Trustee and the General Lien Trustees were directed to execute and deliver an indenture in the form hereof;

Now, therefore, this indenture witnesseth:

That said Thomas T. Fauntleroy, as Special Master as aforesaid, party of the first part, in order to carry into [fol. 648] effect said sale and in pursuance of said Final Decree and said Order of Confirmation and in consideration of the aforesaid payment of and provision for the purchase price, the receipt of which is hereby acknowledged, and in further consideration of the obligations, undertakings, and agreement of St. Louis-San Francisco Railway Company hereinafter set forth, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto St. Louis-San Francisco Railway Company, the party of the seventh part, all the property of every character and description of St. Louis and San Francisco Railroad Company, including all property of every kind and description acquired and held by James W. Lusk, William C. Nixon and William B. Biddle as Receivers in said consolidated cause, being the property more particularly described as follows:

A. The property embraced in the Refunding Mortgage dated June 20, 1901, from the Railroad Company to Morton Trust Company and William H. Thompson, as trustees, under which Guaranty Trust Company of New York is now sole trustee, being:

\* \* \* \* \*

"Here follows detained description of the properties, included in the Deed, incorporated in the decree confirming the sale, as Exhibit A."

Excepting, however, from the property hereby conveyed, assigned and transferred the property conveyed, assigned and transferred by the Special Master, the Railroad Company and the Receivers to the Purchasers by indenture of even date herewith.

To have and to hold, possess and enjoy all and singular the above mentioned real and personal property, rights,

franchises, privileges and immunities thereto appertaining hereby conveyed, or intended so to be, unto said St. Louis-San Francisco Railway Company, its successors and assigns, to its and their own proper use, benefit and behoof forever, free and discharged from any trust or lien imposed thereon by the Refunding Mortgage of the Railroad Company and free and discharged from any trust or lien imposed thereon by the General Lien Mortgage of the Railroad Company and free and discharged from all claims, rights, interest or equity of redemption of, in or to the same by or of the Railroad Company, its successors and assigns, and by or of the creditors and stockholders of the Railroad Company, and by or of all persons claiming by or under or through the Railroad Company, its creditors or its stockholders.

Subject, however, insofar as the lien of any of the following instruments covers any of said property, to the lien of such instruments, viz:

(1) Mortgage or deed of trust, dated July 1, 1896, executed by St. Louis and San Francisco Railroad Company to The Mercantile Trust Company and Paschal P. Carr as Trustees, to secure Consolidated Mortgage Bonds of said St. Louis and San Francisco Railroad Company;

(2) Mortgage or deed of trust, dated January 1, 1898, executed by St. Louis and San Francisco Railroad Company to Central Trust Company of New York as Trustee, to secure Southwestern Division First Mortgage Bonds of said St. Louis and San Francisco Railroad Company;

(3) Mortgage or deed of trust, dated March 28, 1899, executed by St. Louis and San Francisco Railroad Company to Continental Trust Company of the City of New York as Trustee, to secure Central Division First Mortgage Bonds of said St. Louis and San Francisco Railroad Company;

(4) Mortgage or deed of trust, dated October 1, 1900, executed by St. Louis and San Francisco Railroad Company to Continental Trust Company of the City of New York as Trustee, to secure Northwestern Division First Mortgage Bonds of said St. Louis and San Francisco Railroad Company;

- (5) Trust indenture, dated August 1, 1880, executed by St. Louis and San Francisco Railway Company to The United States Trust Company of New York as Trustee, to secure Trust Mortgage Six Per Cent. Bonds of 1880 of said St. Louis and San Francisco Railway Company;
- (6) Trust indenture, dated December 15, 1887, executed by St. Louis and San Francisco Railway Company, to Union Trust Company of New York as Trustee, to secure Trust Mortgage Five Per Cent. Bonds of 1887 of said St. Louis and San Francisco Railway Company;
- (7) Mortgage or deed of trust, dated July 1, 1881, executed by St. Louis and San Francisco Railway Company to The United States Trust Company of New York as Trustee, to secure General Mortgage Five Per Cent. Bonds [fol. 650] and Six Per Cent. Bonds of said St. Louis and San Francisco Railway Company;
- (8) Mortgage or deed of trust, dated July 29, 1879, executed by St. Louis and San Francisco Railway Company to Charles L. Perkins and Jacob Seligman as Trustees, to secure Missouri and Western Division First Mortgage Bonds of said St. Louis and San Francisco Railway Company;
- (9) Mortgage or deed of trust, dated September 1, 1879, executed by St. Louis, Wichita and Western Railway Company to Charles L. Perkins and Jacob Seligman, as Trustees, to secure First Mortgage Bonds of said St. Louis, Wichita and Western Railway Company;
- (10) Mortgage or deed of trust, dated October 1, 1903, executed by Ozark and Cherokee Central Railway Company to Continental Trust Company of the City of New York as Trustee, to secure First Mortgage Bonds of said Ozark and Cherokee Central Railway Company;
- (11) Mortgage or deed of trust, dated June 1, 1902, executed by Muskogee City Bridge Company to St. Louis Union Trust Company as Trustee, to secure First Mortgage Bonds of said Muskogee City Bridge Company;
- (12) Mortgage or deed of trust, dated January 10, 1902, executed by St. Louis, Memphis and Southeastern Railroad

Company to Old Colony Trust Company and John F. Shepley, as Trustees, to secure First Mortgage Bonds of said St. Louis, Memphis and Southeastern Railroad Company;

(13) Mortgage or deed of trust, dated October 1, 1894, executed by Pemiscot Railroad Company to Union Trust Company of St. Louis as trustee, to secure First Mortgage Bonds of said Pemiscot Railroad Company;

(14) Mortgage or deed of trust, dated April 19, 1897, executed by Kennett and Osceola Railroad Company to Union Trust Company of St. Louis as Trustee, to secure First Mortgage Bonds of said Kennett and Osceola Railroad Company;

(15) Mortgage or deed of trust, dated July 1, 1899, executed by Southern Missouri and Arkansas Railroad Company to Irving M. Dittenhoefer and Roderick E. Rombauer as Trustees, to secure First Mortgage Bonds of said Southern Missouri and Arkansas Railroad Company;

(16) Mortgage or deed of trust, dated June 12, 1899, executed by Chester, Perryville and Ste. Genevieve Rail- [fol. 651] way Company to Lincoln Trust Company, as Trustee, to secure First Mortgage Bonds of said Chester, Perryville and Ste. Genevieve Railway Company;

(17) Agreement dated October 1, 1902, executed by Railway Construction and Improvement Company, Old Colony Trust Company and St. Louis and San Francisco Railroad Company to secure First Mortgage Bonds of Birmingham Belt Railroad Company;

(18) Trust agreement, dated September 3, 1912, executed by St. Louis and San Francisco Railroad Company to The Equitable Trust Company of New York, as Trustee, to secure Two Year Secured Six Per Cent. Gold Notes of said St. Louis and San Francisco Railroad Company;

(19) Trust agreement, dated June 1, 1911, executed by St. Louis and San Francisco Railroad Company to Old Colony Trust Company as Trustee, to secure Two Year Secured Five Per Cent. Gold Notes of said St. Louis and San Francisco Railroad Company;

(20) Trust Agreement, dated February 27, 1907, executed by The Chicago, Rock Island and Pacific Railway Company and St. Louis and San Francisco Railroad Company to Mercantile Trust Company as Trustee, to secure First Mortgage Gold Bonds of Rock Island-Frisco Terminal Railway Company;

(21) Equipment Trust Indenture, dated April 1, 1906, between Blair & Co., St. Louis and San Francisco Railroad Company and Bankers Trust Company as Trustee, to secure Equipment Gold Notes, Series G, of said St. Louis and San Francisco Railroad Company;

(22) Equipment Trust Indenture, dated November 1, 1906, between First Trust and Savings Bank, Chicago, Ill., and St. Louis Union Trust Company, St. Louis, Mo., Trustees, St. Louis and San Francisco Railroad Company, and American Car and Foundry Company, to secure Equipment Gold Notes, series I of said St. Louis and San Francisco Railroad Company;

(23) Equipment Trust Indenture, dated June 1, 1906, between The Pullman Company and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series J, of said St. Louis and San Francisco Railroad Company;

(24) Equipment Trust Indenture, dated October 27, 1906, between St. Louis Union Trust Company, St. Louis, [fol. 652] Mo., Trustee, St. Louis and San Francisco Railroad Company, and American Car and Foundry Company, to secure Equipment Gold Notes, Series K, of said St. Louis and San Francisco Railroad Company;

(25) Equipment Trust Indenture, dated August 1, 1907, between St. Louis Union Trust Company, St. Louis, Mo., Trustee, St. Louis and San Francisco Railroad Company, and American Car and Foundry Company, to secure Equipment Gold Notes, Series L, of said St. Louis and San Francisco Railroad Company;

(26) Equipment Trust Indenture, dated August 1, 1907, between The Pullman Company and St. Louis and San Francisco Railroad Company, to secure Equipment Gold

Notes, Series M, of said St. Louis and San Francisco Railroad Company;

(27) Equipment Trust Indenture, dated July 1, 1909, between Central Trust Company of New York, Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series N, of said St. Louis and San Francisco Railroad Company;

(28) Equipment Trust Indenture, dated January 11, 1908, between The Provident Life and Trust Company of Philadelphia, Pa., Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Certificates, Series O, of said St. Louis and San Francisco Railroad Company;

(29) Equipment Trust Indenture, dated October 1, 1909, between Bankers Trust Company, Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series P, of said St. Louis and San Francisco Railroad Company;

(30) Equipment Trust Indenture, dated August 1, 1910, between Central Trust Company of New York, Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series Q, of said St. Louis and San Francisco Railroad Company;

(31) Equipment Trust Indenture, dated December 1, 1910, between United States Express Company, Trustee, and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series R, of said St. Louis and San Francisco Railroad Company;

(32) Equipment Trust Indenture, dated October 1, 1911, between Guaranty Trust Company of New York, Trustee, [fol. 653] and St. Louis and San Francisco Railroad Company, to secure Equipment Gold Notes, Series S, of said St. Louis and San Francisco Railroad Company;

(33) Equipment Trust Indenture, dated September 2, 1912, between Columbia-Knickerbocker Trust Company, Trustee, and Frisco Construction Company, to secure Equipment Gold Notes, Series A, of said Frisco Construction Company;

(34) Equipment Trust Indenture, dated September 16, 1912, between The New York Trust Company, Trustee, and Frisco Construction Company, to secure Equipment Gold Notes, Series B, of said Frisco Construction Company.

Subject also to the express condition that the Purchasers, or their successors or assigns, shall pay, satisfy and discharge:

(A) Any unpaid compensation which has been or shall be allowed to the Special Master appointed in said consolidated cause, or in any of the constituent causes, any unpaid compensation that has been or shall be allowed to the Receivers in said consolidated cause, or their solicitors, and also any unpaid indebtedness and liabilities of the Receivers incurred in said consolidated cause, or in any of the constituent causes, in the management or operation of the property purchased and otherwise in the discharge of their duties as such Receivers between May 27, 1913, the date of their appointment, and the date of the delivery by the Receivers of possession of the property conveyed or intended so to be;

(B) Any unpaid claims of creditors of the Railroad Company which have been or shall be admitted by the parties in interest or adjudged by said Court to be prior in lien or superior in equity to the Refunding Mortgage or to General Lien Mortgage of the Railroad Company;

(C) All just and legal indebtedness of the Railroad Company, payment of which was authorized by the order of said Court appointing the Receivers in said consolidated cause or in any constituent cause, and which shall not at the time of delivery by the Receivers of possession of the property hereby conveyed, or intended so to be, have been paid or satisfied; to the extent that they have not been paid or shall not have been paid out of moneys in possession of the Receivers.

Subject also to the paramount lien and charge reserved by said Court upon said property, for the payment into said Court in cash of the unpaid part of the purchase price.  
[fol. 654] Subject also to all other terms, conditions and reservations of said Final Decree and of said Order of Con-

firmation, whether in this Indenture expressly referred to or not.

And this Indenture further witnesseth:

That St. Louis and San Francisco Railroad Company, party of the second part, in consideration of the sum of ten dollars (\$10), lawful money of the United States, to it paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Final Decree and in said Order of Confirmation contained, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto said St. Louis-San Francisco Railway Company, party of the seventh part, all and singular said railroads, property, rights, franchises, privileges, immunities and appurtenances to the same belonging, rolling stock, property and premises, securities and stocks, above described and hereby conveyed by the Special Master, or intended so to be;

To have and to hold, possess and enjoy, all and singular the property, real and personal, rights franchises, privileges and immunities thereto appertaining above described and hereby conveyed by the Special Master, or intended so to be, unto said St. Louis-San Francisco Railway Company, its successors and assigns, to its and their own proper use, benefit and behoof forever.

And this indenture further witnesseth:

That James W. Lusk, William C. Nixon and William B. Biddle as Receivers as aforesaid, parties of the third part, in consideration of the premises and of the sum of ten dollars (\$10), lawful money of the United States, to each of them in hand paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Order of Confirmation contained, have conveyed and assigned and by these presents do convey and assign unto said St. Louis-San Francisco Railway Company, party of the seventh part, all their right, title and interest as such Receivers in and to any of said property, real or personal, vested or standing in their names or to which they have acquired title as such Receivers;

To have and to hold, possess and enjoy all and singular said property unto said St. Louis-San Francisco Railroad Company, its successors and assigns, to its and their own proper use, benefit and behoof forever.

[fol. 655] And this indenture further witnesseth:

That Guaranty Trust Company of New York, as trustee under the Refunding Mortgage of the Railroad Company dated June 20, 1901, party of the fourth part, in consideration of the premises and of the sum of ten dollars (\$10), lawful money of the United States, to it paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Final Decree and said Order of Confirmation contained, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, to said St. Louis-San Francisco Railway Company, party of the seventh part, all its right, title and interest under said Refunding Mortgage of, in and to all the property, real and personal, above described and hereby conveyed, assigned or transferred by the Special Master or intended so to be;

To have and to hold, possess and enjoy, all and singular said property, unto said St. Louis-San Francisco Railway Company, its successors and assigns, to its and their own proper use, benefit and behoof forever.

And this indenture further witnesseth:

That Bankers Trust Company and Neill A. McMillan, as trustees under the General Lien Mortgage of the Railroad Company dated August 27, 1907, parties of the fifth part, in consideration of the premises and of the sum of ten dollars (\$10), lawful money of the United States, to them paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Order of Confirmation contained, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, to said St. Louis-San Francisco Railway Company, party of the seventh part, all their right, title and interest under said General Lien Mortgage of, in and to all the property, real and personal, above described and hereby conveyed, assigned or transferred by the Special Master, or intended so to be;

To have and to hold, possess and enjoy, all and singular said property unto said St. Louis-San Francisco Railway

Company, its successors and assigns, to its and their own proper use, benefit and behoof forever.

And this indenture further witnesseth:

That Basil B. Elmer and William P. Philips, parties of the sixth part, being the purchasers as joint tenants and not as tenants in common, at the sale of the property sold [fol. 656] under said Final Decree and by this indenture conveyed by the Special Master to said St. Louis-San Francisco Railway Company, having for a valuable consideration, receipt whereof is hereby acknowledged, assigned, transferred and set over, as hereinbefore recited, unto said St. Louis-San Francisco Railway Company, its successors and assigns, all of their right, title and interest in and to the property hereinbefore described and sold to them as aforesaid, including their right to receive a deed or deeds or other instrument or instruments of conveyance, assignment and transfer of said property, do, in consideration of the sum of ten dollars (\$10), lawful money of the United States, to each of them paid, receipt whereof is hereby acknowledged, join in the execution of this indenture for the purpose of releasing and confirming, and they do hereby, release and confirm, unto said St. Louis-San Francisco Railway Company, party of the seventh part, all of their right, title and interest in and to all said property:

To have and to hold, possess and enjoy, all and singular said property unto said St. Louis-San Francisco Railway Company, its successors and assigns, to its and their own proper use, benefit and behoof forever.

And this indenture further witnesseth:

That said St. Louis-San Francisco Railway Company, party of the seventh part, hereby for itself, its successors and assigns, covenants and agrees with the Purchasers, and with each of them, and this conveyance is on the express condition, that said St. Louis-San Francisco Railway Company, its successors and assigns, will perform, satisfy and discharge each and all of the terms of said Final Decree, of said Order of Confirmation and of any other orders which may be made by said Court, on the part of the purchaser of the property under said Final Decree required to be performed, satisfied and discharged, and will enter appear-

ance in said consolidated cause and will indemnify and forever hold harmless the Purchasers, and each of them, their and each of their heirs, executors and administrators, from and against any and all loss, damage, expense and liability whatsoever, which may have been incurred or which may hereafter be incurred by the Purchasers, or either of them, or by their or either of their heirs, executors and administrators, by reason of their said bid at said sale under said Final Decree or the acceptance of said bid or by reason of any acts or things required by said Final Decree or by said Order of Confirmation or by any other order made by said Court, to be assumed and performed by the Purchasers or [fol. 657] by said St. Louis-San Francisco Railway Company, or otherwise arising out of or connected with their acquisition or transfer of any property by them purchased as hereinbefore recited, or by reason of any acts done or suffered or permitted to be done by them; and this conveyance and transfer is made subject to the performance by said St. Louis-San Francisco Railway Company of the foregoing covenants and the same are hereby made a charge upon all the railroads, franchises and other property hereby conveyed, assigned or transferred, or intended so to be, prior to any mortgage or other lien which may be created by said St. Louis-San Francisco Railway Company thereon.

No personal covenant or liability shall be implied against or is assumed or undertaken by the Special Master, the Receivers, the Refunding Trustee, the General Lien Trustees or either of them, the Purchasers or either of them, or any of said parties, by reason of the execution of this indenture or any recital or covenant herein contained.

The fact of purchase and the acceptance of this indenture by the Railway Company shall not be construed as an election to accept any contract, agreement or lease sold as part of the property offered pursuant to said Final Decree or embraced herein, and nothing in this indenture contained shall be construed to constitute an assumption or adoption by the Railway Company of any lease or contract made by the Railroad Company or by the Receivers as part of the property embraced herein except the lease and supplement thereto referred to in Order 66 of said consolidated cause; but the Railway Company shall have the right for a period of six months after the delivery this indenture to elect

whether or not to assume or adopt any lease or contract made by the Railroad Company or by the Receivers as part of the property embraced herein, except said lease and supplement, and, except as aforesaid, the Railway Company, its successors or assigns, shall be held not to have adopted or assumed any lease or contract in respect of which the Railway Company shall not have filed written election to assume or adopt the same with the Clerk of the United States District Court for the Eastern Division of the Eastern District of Missouri, within said period of six months, or within such additional period as said Court may hereafter by its order or decree permit.

In order to facilitate the recording of this indenture, — originals thereof have been executed, acknowledged and delivered, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

In witness whereof, the Special Master, the Receivers, said Neill A. McMillan as one of the General Lien Trustees, and the Purchasers, have hereunto set their hands and seals, and the Railroad Company, Guaranty Trust Company of New York as Refunding Trustee, Bankers Trust Company of New York as one of the General Lien Trustees, and the Railway Company, have caused this indenture to be executed in their respective names by their presidents or vice-presidents, and under their corporate seals, attested by their secretaries or assistant secretaries, all as of the day and year first above written.

— — —, Special Master. (L. S.)

Signed, sealed and delivered by Thomas T. Fauntleroy in the presence of — — —.

\* \* \* \* \*

“Here follows the signatures and acknowledgments in proper form of all parties to said Deed, Exhibit A.”

#### EXHIBIT B

Indenture, dated September —, 1916, between Thomas T. Fauntleroy, as Special Master, appointed by an order entered in the consolidated cause hereinafter mentioned June

8, 1916, to be the Special Master referred to in the Final Decree made and entered in said consolidated cause March 31, 1916 (hereinafter called the Special Master), party of the first part;

St. Louis and San Francisco Railroad Company, a corporation organized and existing under the laws of the State of Missouri (hereinafter called the Railroad Company), party of the second part;

James W. Lusk, William C. Nixon and William B. Biddle, as Receivers of the property of the Railroad Company appointed in said consolidated cause (hereinafter called the Receivers), parties of the third part;

Bankers Trust Company, a corporation organized and existing under the laws of the State of New York, and Neill A. McMillan, a resident and citizen of the State of Missouri, as [fol. 659] trustees under the General Lien Mortgage of the Railroad Company, dated August 27, 1907, (hereinafter called the General Lien Trustees), parties of the fourth part; and

Basil B. Elmer and William P. Phillips, as joint tenants and not as tenants in common (hereinafter called the Purchasers), parties of the fifth part.

Whereas in a certain consolidated cause pending in the District Court of the United States for the Eastern District of Missouri, Eastern Division, entitled "North American Company, Complainant, against St. Louis and San Francisco Railroad Company, Defendant, in Equity No. 4174, Consolidated Cause, Final," there was made and entered on March 31, 1916, a Final Decree, whereby, as amended, nunc pro tunc as of March 31, 1916, by an order entered in said consolidated cause May 15, 1916, among other things it was ordered, adjudged and decreed that all property of every character and description of the Railroad Company, including all property of every kind and description acquired or held by the Receivers in said consolidated cause, should be sold in the manner and subject to the provisions in said Final Decree set forth, and that said sale should be made at the roundhouse, near the point where the mortgaged lines of railroad of the Railroad Company cross the line of Chouteau Avenue in the City of St. Louis in the State of Missouri upon the property to be sold, on a day and at an hour to be fixed by the Special Master, or as the

Court might order, and that notice of the time and place and terms of sale, describing briefly the property to be sold, and referring to said Final Decree, should be published at least once a week for four successive weeks preceding the date of such sale, in a newspaper printed, regularly issued and having a circulation in the City of St. Louis, and State of Missouri, and in a newspaper published in the Borough of Manhattan, City of New York, State of New York; and

Whereas by said Final Decree it was also, among other things, ordered, adjudged and decreed that the Railroad Company, or some one in its behalf, should, within thirty days after the entry of said Final Decree, pay or cause to be paid to Guaranty Trust Company of New York, as Trustee, for the use and benefit of the holders of the outstanding Refunding Bonds of the Railroad Company, and of the coupons appertaining thereto which matured July 1, 1914, the sum of Seventy-four million, eight hundred and twenty-three thousand, one hundred and nine and  $74/100$  dollars (\$74,823,109.74) in gold coin of the United States of America, with interest thereon at the rate of six per [fol. 660] cent per annum from the date of the entry of said Final Decree to the date of payment, and that within the same time the Railroad Company, or some one in its behalf, should also pay or cause to be paid to Bankers Trust Company and Neill A. McMillan, as trustees, for the use and benefit of the holders of the outstanding General Lien Bonds of the Railroad Company, and of the coupons appertaining thereto which matured May 1, 1914, and November 1, 1914, respectively, the sum of Seventy-eight million, fifty-seven thousand dollars (\$78,057,000) in gold coin of the United States of America, with interest thereon at the rate of six per cent per annum, from the date of the entry of said Final Decree to the date of payment; and

Whereas neither the Railroad Company nor anyone in its behalf has paid or caused to be paid either of said sums or any sums, although more than thirty days have elapsed since the entry of said Final Decree; and

Whereas, Thomas T. Fauntleroy was, by an order entered in said consolidated cause June 8, 1916, appointed to be the Special Master referred to in said Final Decree, and by said Final Decree was directed to make and conduct said sale and to execute a deed or deeds or other instrument or in-

struments of conveyance or assignments and transfer of the property sold to the purchaser or purchasers thereof, or his or their assigns, upon an order confirming such sale, and upon payment or settlement of the purchase price, or making provisions therefor, as in said Final Decree provided, or as might be permitted by any order or other decree made in said consolidated cause; and

Whereas July 19, 1916, at twelve o'clock, noon, was duly fixed by the Special Master as the day and hour for the said sale and notice of the time and place and terms of sale was duly given in accordance with the provisions of said Final Decree and in accordance with law; and

Whereas the Special Master on said July 19, 1916, at twelve o'clock, noon, at the round house near the point where the mortgaged lines of railroad of the Railroad Company cross the line of Chouteau Avenue in the City of St. Louis in the State of Missouri upon the property to be sold, pursuant to and in accordance with all the provisions of said Final Decree, sold at public auction to the Purchasers, as joint tenants and not as tenants in common, all property of every kind and description of the Railroad Company, including all property of every kind and description acquired or held by the Receivers in said consolidated cause, [fol. 661] in parcels and for prices as follows:

(1) The property embraced in the Collateral Trust Agreement of June 1, 1911, securing the Two Year Five Per Cent Secured Gold Notes of the Railroad Company, separately and as an entirety, for the sum of \$10,

(2) The property embraced in the Trust Agreement of September 3, 1912, securing the Two Year Six Per — Gold Notes of the Railroad Company, separately and as an entirety, for the sum of \$10,

(3) The securities pledged to secure the promissory note of the Railroad Company held by North American Company, separately and as an entirety, for the sum of \$600,000, and

(4) All the remaining property of every character and description of the Railroad Company, as an entirety, for the sum of \$45,700,200,

the Purchasers being the highest bidders for all the various parcels of said property at said sale and having duly qualified as bidders thereat for each parcel in the manner provided in said Final Decree; and

Whereas the Special Master did after said sale and on or about July 19, 1916, make a report of said sale to the District Court of the United States for the Eastern Division of the Eastern District of Missouri and said report was duly filed in the office of the Clerk of said Court on said day; and

Whereas thereafter, by an order duly made and entered — —, 1916, by said District Court of the United States for the Eastern Division of the Eastern District of Missouri in said consolidated cause, hereinafter called the Order of Confirmation, said report was in all things confirmed, and the sale to the Purchasers of all said property was made final and absolute, and said Court directed the manner in which the purchase price of each of said several parcels should be paid or provided for; and

Whereas that portion of the purchase price of each of said parcels required to be paid in advance of the delivery of instruments of conveyance and transfer has been so paid or settled or provision for the payment thereof has been made in manner approved by said Court, all as by said Order of Confirmation provided; and

[fol. 662] Whereas the Purchasers have duly assigned, transferred and set over unto St. Louis-San Francisco Railway Company all of their right, title and interest, in and to a part of the property sold to them as aforesaid, including their right to receive a deed or deeds or other instrument or instruments of conveyance, assignment and transfer of said part of said property as provided in said Final Decree, and by indenture of even date herewith said part of said property has been conveyed, assigned and transferred to said St. Louis-San Francisco Railway Company; and

Whereas by said Order of Confirmation the form of this indenture was approved by said Court and the Special Master, the Railroad Company and the Receivers were directed to execute and deliver an indenture in the form hereof;

Now, therefore, this indenture witnesseth:

That said Thomas T. Fauntleroy, as Special Master as aforesaid, party of the first part, in order to carry into effect said sale and in pursuance of said Final Decree and said Order of Confirmation and in consideration of the aforesaid payment of and provision for the purchase price, the receipt of which is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto Basil B. Elmer and William P. Philips parties of the fifth part, as joint tenants and not as tenants in common, the following property of St. Louis and San Francisco Railroad Company, including every interest therein acquired and held by James W. Lusk, William C. Nixon and William B. Biddle as Receivers in said consolidated cause:

A. The property embraced in the Collateral Trust Agreement of June 1, 1911, from the Railroad Company to Old Colony Trust Company, as Trustee, securing the Two Year Five Per Cent Secured Gold Notes of the Railroad Company, being:

(a) \$2,500,000 St. Louis and San Francisco Railroad Company Common Stock Trust Certificates, issued in respect of Chicago and Eastern Illinois Railroad Company's Common Stock;

(b) \$1,490,000 of The Kansas City, Fort Scott and Memphis Railway Company Guaranteed Four Per Cent Preferred Stock Trust Certificates;

[fol. 663] (c) \$100,000 General Lien Bonds of the Railroad Company.

B. The property embraced in the Trust Agreement of September 3, 1912, from the Railroad Company to The Equitable Trust Company of New York, as Trustee, securing the Two Year Six Per Cent Secured Gold Notes of the Railroad Company, being:

(a) 20,000 shares stock of New Orleans, Texas and Mexico Railroad Company;

(b) \$4,229,185.09 promissory notes of said last named Company and all other indebtedness of said last named Company to the Railroad Company, except New Orleans, Texas and Mexico Division First Mortgage Bonds;

(c) 14,000 shares preferred stock of the Kirby Lumber Company;

(d) 700 shares stock of the San Benito & Rio Grande Valley Railway Company;

(e) \$625,495 Six Per Cent First Mortgage Bonds of said last named Company;

(f) All other indebtedness of said last named Company to the Railroad Company.

C. The securities pledged to secure the promissory note of the Railroad Company held by the North American Company, being:

(a) \$8,000,000 Stock New Mexico and Arizona Land Company;

(b) \$5,000,000 First Mortgage Bonds New Mexico and Arizona Land Company;

(c) \$200,000 St. Louis and San Francisco Railroad Company, New Orleans, Texas and Mexico Division First Mortgage Bonds.

D. Real Estate, held in the name of trustees, in the Cities of Oklahoma City, Oklahoma; Baton Rouge, Louisiana; Memphis, Tennessee; Dallas, Texas; North Birmingham, Alabama; Tower Grove, Missouri; Taylor City, Missouri; Muskogee, Oklahoma; Joplin, Missouri; Springfield, Missouri; Hulbert, Arkansas; Gratiot, Missouri; Delta, Missouri; and in Menard County, Texas. The following is a description of said real estate and a statement of the trustees in whose names such real estate is held and of the names of the grantors and the places of record of the deeds [fol. 664] under which said real estate was acquired:

Real Estate Held in the Name of William F. Evans, as Trustee: Here follows description of said real estate.

(Omitted to top of page 45 as per stipulation, filed Aug. 26, 1924.)

E. Stock in the following amounts in companies hereinafter named:

Company	Par amount
Red River, Texas and Southern Railway Company .....	\$399,300
Union Terminal Railway Company—Dallas ..	6,000
New Orleans, Mobile & Chicago Railroad Company .....	2,601,870.51
Arkansas Coal & Mining Company .....	11,250
Kirby Lumber Company Preferred Stock .....	65,000
Intermittent Vacuum Precooling Company of Texas .....	60,000
Crescent Hotel Company .....	15,198
Hotel Realty Company .....	5,000
Jasper Land Company .....	8,666.67
Star Publishing Co., Ft. Worth .....	200

F. The following corporate bonds and obligations:

Company	Amount
New Orleans, Mobile & Chicago R. R. Co. First Mortgage Five Per Cent Bonds .....	\$100,000
Cape Girardeau Northern Railway Company First Mortgage Five Per Cent Bonds .....	16,000
St. Louis Club Second Mortgage Five Per Cent Bonds .....	2,500
Rio Grande Railroad Company First Mortgage Six Per Cent Bonds .....	65,000
Brownsville Street & Interurban Railway Company First Mortgage Six Per Cent Bonds .....	20,000
San Benito & Rio Grande Valley Railway Company First Mortgage Six Per Cent Bonds ..	328,240
[fol. 665] St. Louis and San Francisco Railroad Company New Orleans, Texas and Mexico Division First Mortgage Five Per Cent Bonds .....	254,818.40
Kansas City, Fort Scott & Memphis Railway Company Refunding Mortgage Four Per Cent Bonds .....	106,000

Company	Amount
St. Louis and San Francisco Railroad Company Chicago & Eastern Illinois Common Stock Trust Certificate.....	20,000
St. Louis and San Francisco Railroad Company Equipment Trust Gold Notes:	
Series A .....	590,000
Series B .....	620,000
Series C .....	550,000
Series D .....	399,095.19
Series E .....	423,593.04
Series F .....	696,000
Series G .....	1,848,000
Series H .....	375,000
Series I .....	1,867,000
Series J .....	120,144.48
Series K .....	218,000
Colorado Southern, New Orleans and Pacific Railroad Company Equipment trust notes, Series A .....	480,000

To Have And To Hold, possess and enjoy all and singular the above mentioned real and personal property rights, franchises, privileges and immunities thereto appertaining hereby conveyed, or intended so to be, unto said Basil B. Elmer and William P. Philips, as joint tenants, and not as tenants in common, and unto the survivor of them, his heirs and personal representatives, and their and his successors and assigns, to their own proper use, benefit and behoof forever, free and discharged from any trust or lien imposed thereon by the Refunding Mortgage of the Railroad Company and free and discharged from any trust or lien imposed thereon by the General Lien Mortgage of the Railroad Company and free and discharged from all claims, rights, interest or equity of redemption of, in or to the same or by or of the Railroad Company, its successors and assigns, and by or of the creditors and stockholders of the Railroad Company, and by or of all persons claiming by or under or through the Railroad Company, its creditors or its stockholders.

[fol. 666] Subject, however, insofar as the lien of any of the instruments specified in Article Fourth of said Final

Decree covers any of said property, to the lien of such instruments, including:

(1) Trust Agreement, dated September 3, 1912, executed by St. Louis and San Francisco Railroad Company to The Equitable Trust Company of New York, as Trustee, to secure Two Year Secured Six Per Cent Gold Notes of said St. Louis and San Francisco Railroad Company; and

(2) Trust Agreement, dated June 1, 1911, executed by St. Louis and San Francisco Railroad Company to Old Colony Trust Company as Trustee, to secure Two Year Secured Five Per Cent Gold Notes of said St. Louis and San Francisco Railroad Company.

Subject also to all the terms, conditions and reservations of said Final Decree and of said Order of Confirmation whether in this Indenture expressly referred to or not.

And This Indenture Further Witnesseth:

That St. Louis and San Francisco Railroad Company, party of the second part, in consideration of the sum of ten dollars (\$10), lawful money of the United States, to it paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Final Decree and in said Order of Confirmation contained, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto said Basil B. Elmer and William P. Philips, parties of the fifth part, as joint tenants and not as tenants in common, all and singular said property above described and hereby conveyed by the Special Master, or intended so to be;

To Have and To Hold, possess and enjoy, all and singular said property hereby conveyed by the Special Master, or intended so to be, unto said Basil B. Elmer and William P. Philips, as joint tenants and not as tenants in common, and unto the survivor of them, his heirs and personal representatives and their and his successors and assigns, to their own proper use, benefit and behoof forever.

And This Indenture Further Witnesseth :

That James W. Lusk, William C. Nixon and William B. Biddle as Receivers as aforesaid, parties of the third part, in consideration of the premises and of the sum of ten [fol. 667] dollars (\$10), lawful money of the United States, to each of them in hand paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Order of Confirmation contained, have conveyed and assigned and by these presents do convey and assign unto said Basil B. Elmer and William P. Philips, parties of the fifth part, as joint tenants and not as tenants in common, all their right, title and interest as such Receivers in and to any of said property, real or personal, vested or standing in their names or to which they have acquired title as such Receivers ;

To Have And To Hold, possess and enjoy all and singular said property unto said Basil B. Elmer and William P. Philips, as joint tenants and not as tenants in common, and unto the survivor of them, his heirs and personal representatives and their and his successors and assigns, to their own proper use, benefit and behoof forever.

And This Indenture Further Witnesseth :

That Bankers Trust Company and Neill A. McMillan, as trustees under the General Lien Mortgage of the Railroad Company dated August 27, 1907, parties of the fourth part, in consideration of the premises and of the sum of ten dollars (\$10), lawful money of the United States, to them paid, receipt whereof is hereby acknowledged, and pursuant to the directions in said Final Decree and said Order of Confirmation contained, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, to said Basil B. Elmer and William P. Philips, parties of the fifth part, as joint tenants and not as tenants in common, all their right, title and interest under said General Lien Mortgage of, in and to all the property, real and personal, above described and hereby conveyed, assigned or transferred by the Special Master, or intended so to be ;

To Have And To Hold, possess and enjoy, all and singular said property, unto said Basil B. Elmer and William P. Philips, as joint tenants and not as tenants in common, and unto the survivor of them, his heirs and personal repre-

sentatives, and their and his heirs and assigns, to their own proper use, benefit and behoof forever.

No personal covenant or liability shall be implied against or is assumed or undertaken by the Special Master, the Receivers, or the Purchasers or either of them, or any of said parties, by reason of the execution of this indenture or any [fol. 668] recital or covenant herein contained.

The fact of purchase and the acceptance of this indenture by the Purchasers shall not be construed as an election to accept any contract, agreement or lease sold as part of the property offered pursuant to said Final Decree or embraced herein, and nothing in this indenture contained shall be construed to constitute an assumption or adoption by the Purchasers of any lease or contract made by the Railroad Company or by the Receivers as part of the property embraced herein; but the Purchasers shall have the right for a period of six months after the delivery of this indenture to elect whether or not to assume or adopt any lease or contract made by the Railroad Company or by the Receivers as part of the property embraced herein, and the Purchasers, their successors or assigns, shall be held not to have adopted or assumed any lease or contract in respect of which the Purchasers, or their successors or assigns, shall not have filed written election to assume or adopt the same with the Clerk of the United States District Court for the Eastern Division of the Eastern District of Missouri, within said period of six months, or within such additional period which said Court may hereafter by its order or decree permit.

In order to facilitate the recording of this indenture, originals thereof have been executed, acknowledged and delivered, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

In Witness Whereof, the Special Master, the Receivers and said Neill A. McMillan as one of the General Lien Trustees, have hereunto set their hands and seals, and the Railroad Company and Bankers Trust Company as one of the General Lien Trustees, have caused this indenture to be executed in their respective names by their presidents or vice-presidents, and under their corporate seal, attested by

their secretaries or assistant secretaries, all as of the day and year first above written.

— — —, Special Master. (L. S.)

Signed, sealed and delivered by Thomas T. Fauntleroy in the presence of — — —, Attesting Witnesses.

\* \* \* \* \*

[fol. 669] "Here follows the signatures and acknowledgments, in proper form, of all parties to Exhibit B, incorporated in said decree, confirmed the sale.

Counsel for defendant, in reply to the question whether he would admit that the reorganization plan, a copy of which was introduced at the last hearing, was carried out in the reorganization, with the exception of those departures required by the orders and opinions of the Public Service Commission of Missouri, as shown in Volumes 3 and 4 of the reports of the Public Service Commission, stated that he could not admit that (p. 73).

W. F. EVANS, called as a witness by interveners, testified as follows:

Mr. Murphy: Mr. Evans, you need not be sworn. I just want to ask you a few questions. A plan for the reorganization of the St. Louis and San Francisco Railroad Company property was filed in the District Court here in St. Louis. Afterwards applications were filed before the Public Service Commission of Missouri for a permit to issue securities on the basis of the plan. My recollection is the evidence shows that in its first opinion the Public Service Commission ruled out two features of the plan, one relative to the placing of stock of the new company in the hands of a voters' trust. I don't remember what the other was. What I would like to ask you is this; Was the reorganization finally consummated on the basis of the plan, with the changes or change, whatever it may be, required by the Public Service Commission of Missouri?

Mr. Evans: I am unable to answer that. The reorganization plan was prepared by New York Counsel, and whatever was done in carrying it out, or in complying with its

provisions, was under the direction of New York Counsel, and I am unable to tell you what was done.

Witness further testified that New York Counsel represented the reorganization management, as far as he was advised; that was Speyer & Company; that he did not know in a general way that that plan was carried out; that he could not say; that he presumed it was, but he did not know whether it was; that he knew of no other plan having been filed, and that as far as he knew, there was a reorganization (p. 75).

[fol. 670] Mr. Murphy: Will you examine those deeds, and if any changes were made read into the record what the changes were?

Mr. Miller: You have copies of those things. I think you ought to assume that burden.

Mr. Murphy: We haven't any copies of the deeds.

Mr. Miller: Well, we will find copies of the deeds for you. I don't want to assume the responsibility of doing that.

Mr. Murphy: Well, I offer in evidence the deeds conveying this property from the purchaser or assignee under the reorganization plan, and then the order confirming the sale under the final decree.

Admitted subject to objection. To which ruling of the Master the defendant then and there duly excepted.

Said deeds, offered as Interveners, Exhibit 23, are in words and figures as follows, to-wit;

Said deeds omitted here as same are identical with Ex. A and B attached to Interveners' Ex. 22 supra.

Counsel for interveners and for defendants agreed for the purposes of the record, that a stipulation was entered into that cause 4320 in the District Court of the United States for the Western Division of the Western District of Missouri, would abide the result of the appeal in cause No. 4308 pending in the same court (p. 76).

Counsel for intervener- offered the inventory showing the amount of supplies and material on hand at the time of the appointment of the receivers.

Mr. Miller: That is objected to for the same reason as contained in the answers, is wholly immaterial.

The Master: It is admitted—subject to the objection.

To which ruling of the Master the defendant then and there duly excepted and still except- (p. 77).

Inventory offered as interveners' Exhibit 24 is in words and figures as follows, to-wit:

[fol. 671]

## INTERVENERS' EXHIBIT 24

File 1224-3

St. Louis, August 13th, 1913.

D1.

Messrs. T. H. West, W. C. Nixon, W. B. Biddle, Receivers, Building.

GENTLEMEN: As requested in your advice of May 28th, last, I submit herewith the complete inventory, in duplicate, of the property of the St. Louis & San Francisco Railroad Company, transferred to the Receivers at May 28th, 1913, as required to be filed by the Receivers with the Special Master, in accordance with order of the Court.

I have not gone over the details of this with our Counsel, but will do so when he returns.

The exhibits "A" to "J," inclusive, are in a package of rather large size, which I will transmit to you at any time you may desire them.

Yours very truly, A. Douglas.

AD-f.

Inventory of Property of the St. Louis and San Francisco Railroad Company Transferred to Receivers at May 28th, 1913

	Miles first main track owned	Miles second track owned	Miles side track owned	Miles trackage rights operated
St. Louis and San Francisco R. R. main and side track mileage				
St. Louis, Mo., to Oklahoma City, Okla.	543.69	16.55	251.97	....
Sapulpa, Okla., to Texas State Line...	192.81	....	50.55	.16
Monett, Mo., to Red River.....	286.13	....	65.31	....
Pierce City, Mo., to Ellsworth, Kan...	323.80	....	69.02	....
Springfield, Mo., to Kansas City, Mo...	189.49	....	44.46	3.80
Beaumont, Kan., to Blackwell, Okla...	49.73	....	9.33	....
Girard, Kan., to Galena, Kan.....	46.93	....	32.22	....
Oronogo, Mo., to Joplin, Mo.....	9.32	....	6.69	....
Springfield, Mo., to Chadwick, Mo....	34.86	....	6.99	....
Cuba Jet., Mo. to Salem, Mo. and Branches .....	59.54	....	12.02	....
Rogers, Ark., to Grove, Okla.....	47.16	....	3.73	....
Fayetteville, Ark., to Pettigrew, Ark..	41.32	....	4.65	....
Jenson, Ark., to Mansfield, Ark.....	18.34	....	19.44	....
Pittsburg, Kan., to Weir City, Kan., and Mines .....	10.48	....	8.63	....
Springfield Connecting Railway.....	2.93	....	1.58	....
Granby, Mo., to Granby Mines.....	1.50	....	1.00	....
Blackwell, Okla., to South Bank Red River .....	238.68	....	40.38	....
Oklahoma City (Okla.) to South Bank Red River .....	174.85	....	27.94	....
Hope, Ark., to Ardmore, Okla.....	223.50	....	42.79	.22
Scullin, Okla., to Sulphur Springs, Okla.	8.72	....	1.20	....
Mead Jet., Okla., to Platter, Okla. (now Kiersey, Okla., to Texas Jet., Okla.)	9.24	....	1.00	....

St. Louis and San Francisco R. R. main and side track mileage	Miles first main track owned	Miles second track owned	Miles side track owned	Miles trackage rights operated
Fayetteville, Ark., to Okmulgee, Okla.,	143.90	....	18.93	....
A. V. & W. Jet., to Ayard, Okla.,	175.25	....	26.94	....
Ayard, Okla., to Waynoka, Okla.,	9.70	....	....	9.70
S. E. Jet., Mo., to Luxora, Ark.,	241.70	....	77.06	....
Nash, Mo., to Hoxie, Ark.,	121.00	....	17.57	....
[fol. 672] Mingo, Mo., to Hunter, Mo.,	45.80	....	3.59	....
Hayti, Mo., to Grassy Bayou (via Ca- ruthersville) .....	15.70	....	3.55	....
Gulf Jet., Mo., to Leachville, Ark.,	118.20	....	18.20	....
Clarkton, Mo., to Malden, Mo.,	7.30	....	1.03	....
Kennett, Mo., to Hayti, Mo.,	18.30	....	1.94	....
Wardell, Mo., to Deering, Mo.,	12.10	....	1.30	....
Zalma, Mo., to Aquilla, Mo.,	18.40	....	.62	....
Van Duser, Mo., to Gibson, Mo.,	56.00	....	5.73	....
Talpoosa, Mo., to Wardell, Mo.,	10.70	....	....	....
	<u>3,536.47</u>	<u>16.55</u>	<u>878.14</u>	<u>13.88</u>

## Leasehold Estates:

Kansas City, Ft. Scott and Memphis Ry.	117.00	23.90	97.87	....
Kansas City, Mo., to Arcadia, Kan.	285.78	....	115.91	....
Springfield, Mo., to Memphis, Tenn.	20.78	....	6.90	....
Linton, Kan., to Rich Hill, Mo.,	11.40	....	3.17	....
Tyronza Jet., Ark., to Station 461, Ark. ....	80.17	....	71.33	....
Edward, Kan., to Webb City, Mo.,	74.50	....	37.33	....
Arcadia, Kan., to Cherryvale, Kan.	3.94	....	8.46	....
Weir Jet., Kan., to Weir City, Kan.	35.75	....	5.58	....
Bonnerville, Ark., to Algon, Ark. (MP 447) .....	37.67	....	3.15	....
Greenfield, Mo., to Aurora, Mo.,	13.04	....	2.93	....
Baxter, Kan., to Miami, Okla.,	36.39	....	11.85	....
Beckerville, Ark., to Luxora, Ark.,	81.95	....	8.82	....
Willow Springs, Mo., to Grandin, Mo. ....	13.09	....	1.62	....
Jacques Jet., Extension, Kan.,	1.06	....	.92	....
Arcadia, Kan., to Springfield, Mo.,	85.00	....	16.01	....
Evadale, Ark., to Turrell, Ark.,	16.50	....	5.72	....
Marion, Ark., to Hulbert, Ark.,	5.49	....	.05	....
	<u>919.45</u>	<u>23.90</u>	<u>398.01</u>	<u>....</u>

Kansas City, Memphis and Birmingham Ry. ....	265.51	....	111.55	....
Memphis, Tenn., to Birmingham, Ala. ....	11.06	....	3.34	....
Pratt City, Ala., to Bessemer, Ala.	9.00	....	3.38	....
	<u>285.66</u>	<u>....</u>	<u>118.27</u>	<u>....</u>

Grand Total ..... 4,741.58 40.45 1,394.42 13.88

In addition to the above there is material in Temporary Side Tracks at various points valued at \$20,796.22. (See Exhibit "J.")

And in Temporary Telegraph Line between Dallas and Houston, Tex., valued at \$4,770.73.

Also all Freight and Passenger Stations, Fuel Stations, Section Houses, Round-Houses, and all other buildings and structures situated thereon and pertaining thereto, with all Furniture and Fixtures therein.

[fol. 673] Also the following Locomotive and Car Repair Shops, with full complement of Tools and machinery therein:

Springfield, Mo.—North Shops.  
 Springfield, Mo.—South Side Shops.  
 Springfield, Mo.—North Side (new) Shops.  
 Kansas City, Mo.—Shops.  
 Memphis, Tenn.—Shop.  
 Birmingham, Ala.—Shops.

Mechanical Department "Patterns," located at the under-noted points:

Seullin & Gallagher Foundry, St. Louis, Mo.  
 Hewitt Mfg. Co. Foundry, St. Louis, Mo.  
 United Iron Works Foundry, Springfield, Mo.  
 Livermore Foundry, Memphis, Tenn.

Land in the following counties, as per books in the Land Department:

Maries County, Mo.....	1,410	Acres	} In name of W. F. Evans, Trustee
Phelps County, Mo.....	22,876	Acres	
Pulaski County, Mo.....	29,254.87	Acres	
McDonald County, Mo.	840	Acres	
Benton County, Ark....	1,547.64	Acres	
	55,928.51	Acres	

Rolling Stock Equipment as follows:

	Number owned	Owned subject to equipment trusts	Total No. owned and leased at May 28, 1913
Locomotives .....	711	335	1,046
=====			
Passenger Cars:			
Coaches, First Class.....	79	78	157
Coaches, Second Class.....	88	...	88
Chair .....	59	39	98
Combination:			
Coach and Cafe.....	...	6	6
Coach and Mail.....	23	18	41
Coach, Mail and Baggage.....	8	...	8
Coach and Baggage.....	19	9	28
Mail, Baggage and Express.....	18	21	39
Baggage and Express.....	67	45	112
Cafe Club .....	...	3	3
Buffet Club .....	...	4	4
Postal .....	16	22	38
Official .....	19	...	19
Dining .....	...	11	11
Grill .....	2	...	2
Observation, Cafe .....	6	6	12
Fruit (Passenger) .....	7	...	7
Gasoline—Electric .....	...	6	6
Express Refrigerator .....	...	25	25
Grain Exhibit .....	1	...	1
	=====	=====	=====
Total Passenger Cars.....	412	283	705
	=====	=====	=====

[fol. 674] Freight Cars:	Number owned	Owned	Total No.
		subject to equipment trusts	owned and leased at May 28, 1913
Box .....	5,505	9,173	14,678
Automobile .....	102	548	650
Furniture .....	279	1,114	1,393
Stock .....	136	983	1,119
Coal .....	4,163	7,280	11,443
Flat .....	375	497	872
Fruit (Freight) .....	56	...	56
Refrigerator .....	4	500	504
Coke .....	5	50	55
Tank .....	1	497	498
Ice (Commercial) .....	256	...	256
Combination Stock and Coal.....	...	499	499
Caboose .....	235	220	455
Total Freight Cars .....	11,117	21,361	32,478
=====			
Miscellaneous Cars:			
Steam Wrecker .....	4	3	7
Derricks .....	12	2	14
Pile Drivers .....	1	...	1
Steam Shovels .....	11	...	11
Ditchers .....	8	...	8
Ballast Spreaders .....	5	...	5
Rodger Plows .....	5	...	5
Ledgerwood Ballast Unloaders.....	8	...	8
Rail Loaders .....	1	...	1
Rail Curvers .....	1	...	1
Snow Plows .....	1	...	1
Gas Transports .....	3	...	3
Water Cars .....	59	...	59
Tool and Material Cars (Miscellaneous) .....	295	...	295
Boarding Cars .....	743	...	743
Supply Cars .....	3	...	3
Scale Testers .....	6	...	6
Ballast Cars .....	521	341	862
Cinder Cars .....	80	...	80
Locomotive Coaling Cranes.....	8	3	11
Weed Burners .....	2	...	2
Air Compressors .....	1	...	1
Ice (Company) .....	4	...	4
Total Miscellaneous Cars.....	1,818	349	2,167
=====			
Total Cars .....	13,347	22,003	35,350
=====			
Grand Total, Engines and Cars	14,058	22,338	36,396
=====			

[fol. 675] Office Furniture and Fixtures off the Line of Railroad at points as follows:

- In General Office, on 10th and 11th floors, 71 Broadway, New York, N. Y.
- In General office, on 6th to 13th floors, 9th and Olive streets, St. Louis, Mo.
- General Office Building, Jefferson and Olive streets, Springfield, Mo.
- Freight and Passenger Office, St. Louis, Mo., joint with C. & E. I. R. R.
- Freight and Passenger Office, Atlanta, Ga., joint with C. & E. I. R. R.
- Freight and Passenger Office, Birmingham, Ala., joint with C. & E. I. R. R.

- Freight and Passenger Office, Cincinnati, Ohio, joint with C. & E. I. R. R.  
 Passenger Office, Chicago, Ill., joint with C. & E. I. R. R.  
 Freight Office, Chattanooga, Tenn., joint with C. & E. I. R. R.  
 Freight Office, Clovis, N. M., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Denver, Colo., joint with C. & E. I. R. R.  
 Passenger Office, Ft. Smith, Ark., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Jacksonville, Fla., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Joplin, Mo., joint with C. & E. I. R. R.  
 Freight Office, Indianapolis, Ind., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Kansas City, Mo., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Los Angeles, Cal., joint with C. & E. I. R. R.  
 Freight Office, Louisville, Ky., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Memphis, Tenn., joint with C. & E. I. R. R.  
 Freight Office, Minneapolis, Minn., joint with C. & E. I. R. R.  
 Freight and Passenger Office, New York, N. Y., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Oklahoma City, Okla., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Pittsburgh, Pa., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Springfield, Mo., joint with C. & E. I. R. R.  
 Freight Office, San Francisco, Cal., joint with C. & E. I. R. R.  
 Passenger Office, St. Paul, Minn., joint with C. & E. I. R. R.  
 Passenger Office, Wichita, Kan., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Chicago, Ill., joint with C. & E. I. R. R.  
 Freight Office, Danville, Ill., joint with C. & E. I. R. R.  
 Freight Office, Detroit, Mich., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Evansville, Ill., joint with C. & E. I. R. R.  
 Freight Office, Milwaukee, Wis., joint with C. & E. I. R. R.  
 Freight Office, Nashville, Tenn., joint with C. & E. I. R. R.  
 Freight Office, Nat. Stock Yards, Ill., joint with C. & E. I. R. R.  
 Freight Office, Salem, Ill., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Terre Haute, Ind., joint with C. & E. I. R. R.  
 Freight and Passenger Office, Baton Rouge, La., joint with C. & E. I. and N. O. T. & M. R. R.  
 Freight and Passenger Office, Beaumont, Tex., joint with C. & E. I. and N. O. T. & M. R. R.  
 Passenger Office, Corpus Christi, Tex., joint with C. & E. I. and N. O. T. & M. R. R.  
 Freight and Passenger Office, Dallas, Tex., joint with C. & E. I. and N. O. T. & M. R. R.  
 Freight and Passenger Office, Ft. Worth, Tex., joint with C. & E. I. and N. O. T. & M. R. R.  
 Freight and Passenger Office, Houston, Tex., joint with C. & E. I. and N. O. T. & M. R. R.  
 Freight and Passenger Office, New Orleans, La., joint with C. & E. I. and N. O. T. & M. R. R.  
 Freight and Passenger Office, San Antonio, Tex., joint with C. & E. I. and N. O. T. & M. R. R.  
 Freight Office, New Iberia, La., joint with C. & E. I. and N. O. T. & M. R. R.  
 Ticket Office—Union, Oklahoma City, Okla., joint with A. T. & S. F. C. R. I. & P. and M. K. & T. R. R.

[fol. 676] Material and Supplies on hand in store houses, etc., as per statements showing details marked below:

"A" Roadway and Transportation Material...	\$620,809.11	
"B" Rail .....	132,783.01	
"C" 1 Ties .....	426,531.22	
"C" 2 Ties at Creosoting Plants.....	260,758.89	
"D" Store Department, Stock "D".....	1,254,067.57	
"E" Stationery Department, Stock "B".....	32,922.57	
"F" Maintenance of Equipment Material.....	663,869.95	
"G" Fuel .....	115,280.23	
"H" Interchangeable Mileage Credential Stock	714.00	
"I" Advertising Playing Card Stock.....	156.48	
	<hr/>	\$3,507,893.03
Live Stock, 1 Horse, 1 Mule, cost \$290.00,		

#### Asset Accounts:

Cash in Treasury.....		\$603,849.96
Cash in Hands of following Fiscal Agents:		
Banque Privee (Paris), Foreign Coupon Account .....	\$1,012,557.50	
Speyer & Co. (New York), Foreign Coupon Account .....	601,609.26	
Old Colony Trust (Boston), Foreign Coupon Account .....	12,073.80	
Bankers Trust Co. (New York), Foreign Coupon Account .....	6,401.84	
Guaranty Trust Co. (New York), Foreign Coupon Account .....	12,800.00	
Banque de l'Union Parisienne (Paris) Foreign Coupon Account .....	116,050.50	
Blair & Company (New York), Foreign Coupon Account .....	180.00	
Union Trust Co. (New York), Foreign Coupon Account .....	237.50	
St. Louis Union Trust Co. (St. Louis), Foreign Coupon Account .....	2,950.00	
Equitable Trust Co. (New York), Foreign Coupon Account .....	1,285.00	
New York Trust Co. (New York), Foreign Coupon Account .....	7,026.85	
First Trust & Savings Bank (Chicago), Foreign Coupon Account.....	50.00	
Central Trust Co. (New York), Foreign Coupon Account .....	42,350.00	
Provident L. & T. Co. (Philadelphia), Foreign Coupon Account.....	360.00	
United States Trust Co. (New York), Foreign Coupon Account.....	270.00	
United States Trust Co. (New York), Foreign Coupon Account .....	270.00	
Union Trust Co. (New York), Trust 5s of 1887, Foreign Coupon Account.....	850.00	
Mercantile Trust Co. (New York), Foreign Coupon Account .....	1,030.00	
New York Trust Co. (New York), Dividend Account .....	180.00	
Equitable Trust Co. (New York), C. & E. I. R. R., Dividend Account.....	4,203.50	
	<hr/>	\$1,822,555.75

## [fol. 677] Cash in Hands of Trustees for Called Bonds:

Mercantile Trust Co., New York, Trustee, Mo. Kan. & Colo. Ry. ....	\$5,000.00
Guaranty Trust Co., New York, Redemption of St. L. & S. F. Ry. A. B. C. Bonds.....	1,700.00
Mercantile Trust Co., New York, Redemp- tion of St. S. & V. B. Br. Co. Bonds.....	1,000.00
New England Trust Co., Boston, Trustee, K. C. M. & B. R. R. Notes.....	362.50
Union Trust Co., New York, Redemption of St. L. & S. F. R. R. 3-year 5% Notes.....	2,000.00
	<hr/>
	10,062.50

## Special Deposits:

Blair & Co., Fire Claims Collections.....	\$28,230.65
Pullman Co., Fire Claims Collections.....	15,877.43
Bankers Trust Co., Fire Claims Collections	9,573.72
St. Louis Union Trust Co., Fire Claims Col- lections .....	770.00
Central State Bank & Trust Co., Memphis..	1,076.90
Mercantile Trust Co. (N. Y.), Trustee under K. C. F. S. & M. Ry. Refunding Mortgage	2,136.05
Mercantile Trust Co. (St. L.), Bonus Note Account .....	4,731.69
Marked Tree Bank & Trust Co.....	400.00
Comanche Light & Power Co.....	15.00
Southwest Missouri Light Co.....	28.75
City of St. Louis (Water Deposit).....	100.00
Consolidated Light, Power & Ice Co.....	5.00
City of St. Louis (Street Excavation De- posit) .....	25.00
American Gas Co. (Columbus, Kan.).....	5.00
City of Carbon Hill, Ala.....	5.00
	<hr/>
	62,980.19

## Securities as follows:

Kan. S. W. Ry. Co., Capital Stock .....	Par Value, \$181,000.00
Birmingham Terminal Co., Cap- ital Stock .....	Par Value, 25,000.00
Kansas City Terminal Co., Cap- ital Stock .....	Par Value, 100,000.00
Wichita Union Terminal Ry. Co., Capital Stock .....	Par Value, 25,000.00
Frisco Refrigerator Line, Cap- ital Stock .....	Par Value, 5,000.00
Rio Grande Ry., Capital Stock....	Par Value, 25,000.00
Paris & Great Nor. R. R. Co., Capital Stock .....	Par Value, 4,500.00
St. Louis, San Fran. & Tex. Ry. Co., Capital Stock.....	Par Value, 700.00
Kansas City, Ft. Scott & Mfs. Ry., Capital Stock.....	Par Value, 5,500.00
Kansas City, Mfs. & Bighm. R. R. Co., Capital Stock.....	Par Value, 1,200.00
Kansas City & Memphis Ry. and Br. Co., Capital Stock....	Par Value, 500.00
St. Louis & San Francisco R. R. Co. 1st Prfd. Stock.....	Par Value, 6,525.10
St. Louis & San Francisco R. R. Co., 2d Prfd. Stock.....	Par Value, 1,364,153.00

St. Louis & San Francisco R. R. Co., Common Stock.....	Par Value,	7,649.40
[fol. 678] Alexandria, Bayou, Ma- con & Greenville R. R., Capital Stock .....	Par Value,	206,600.00
Arkansas Northern R. R., Cap- ital Stock .....	Par Value,	5,500.00
Arkansas Coal & Mining Co., Capital Stock .....	Par Value,	11,250.00
Western Construction Co., Cap- ital Stock .....	Par Value,	5,000.00
New Orleans, Mobile & Chicago R. R. Co., Capital Stock.....	Par Value,	2,601,870.51
Quanah, Acme & Pacific R. R. Co., Capital Stock .....	Par Value,	60,000.00
Crescent Hotel Co., Capital Stock .....	Par Value,	15,198.00
Hotel Realty (Hotel Jefferson, St. L.) Capital Stock.....	Par Value,	5,000.00
Jasper Land Company, Capital Stock .....	Par Value,	8,666.67
Star Publishing Co. (Fl. Worth), Capital Stock.....	Par Value,	200.00
Kirby Lumber Co., Capital Stock .....	Par Value,	65,000.00
Brownsville, St. & Interurban R. R., Capital Stock.....	Par Value,	10,000.00
Intermittent Vacuum Pre-cool- ing Co., Capital Stock.....	Par Value,	60,000.00
St. L. & S. F. R. R. Co. Gen. Lien Mtg. 5% Bonds.....	Par Value,	216.03
St. L. & S. F. R. R. Co. Re- funding Mtg. 4% Bonds.....	Par Value,	5,000.00
St. L. & S. F. R. R. Co., N. O. T. & M. Division, 1st Mtg. 5% Bonds .....	Par Value,	254,930.01
St. L. M. & S. E. R. R. 1st Mortgage 4% Bonds .....	Par Value,	125.00
West Tulsa Belt R. R. 1st Mtg. 5% Bonds .....	Par Value,	30,500.00
Cape Girardeau & Nor. R. R. 1st Mtg. 5% Bonds.....	Par Value,	16,000.00
St. Louis Club 2d Mtg. 5% Bonds .....	Par Value,	3,000.00
St. L. & S. F. R. R. Co. Criffs. for C. & E. I. R. R. Com- mon Stock .....	Par Value,	20,000.00
Winchell Townsite Co., Capital Stock .....	Par Value,	2,000.00
Frisco Construction Co., Cap- ital Stock .....	Par Value,	5,000.00
Memphis Railroad Terminal Co., Capital Stock.....	Par Value,	10,000.00
New Orleans Terminal Co., Capital Stock .....	Par Value,	1,000,000.00

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6,152,793.62

Statement marked "J" gives of securities transferred to Receivers, which are either worthless, or are muniments of title, or belong to other companies, as indicated.

Cash and Securities in Sinking Funds with—

United States Trust Co., Trustee, Trust Mtg. of 1880 .....	\$107,611.22	
Bay State Trust Co., Trustee, K. C. & M. Ry. & Br. Co., 1st Mortgage.....	397,748.72	
		505,359.94

[fol. 679] Miscellaneous Railroad Property, as follows:

Rio Grande Ry. and Equipment, 22.5 miles (exclusive of cost of Capital Stock).....	115,478.06
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Miscellaneous Physical Investments:

Oklahoma City (Okla.) Terminal Property, in name of W. F. Evans, Trustee...Cost,	\$214,753.10	
West Baton Rouge (La.) Terminal Prop- erty (Anchorage Plantation), in name of W. F. Evans, Trustee—Undivided half interest on approximately 564 acres..Cost,	34,343.23	
Memphis Union Depot Property—Undi- vided one-tenth interest on property pur- chased at Memphis, Tenn., for Union Depot .....	Cost,	121,000.00
North Birmingham (Ala.) Property—in name of W. F. Evans, Trustee.....Cost,	12,772.86	
Tower Grove (St. Louis, Mo.) Property— in name of W. F. Evans, Trustee...Cost,	29,339.83	
Taylor City Belt (St. Louis, Mo.) Property —in name of W. F. Evans, Trustee...Cost,	1,139.93	
Muskogee (Okla.) Real Estate—in name of W. F. Evans, Trustee.....Cost,	11,543.50	
Springfield (Mo.) Real Estate—in name of W. F. Evans, Trustee.....Cost,	75,090.52	
Hulbert (Ark.) Real Estate—in name of W. F. Evans, Trustee.....Cost,	322.00	
Joplin (Mo.) Real Estate—in name of W. F. Evans, Trustee.....Cost,	1,372.40	
Arkansas City (Ark.) Real Estate—in name of W. F. Evans, Trustee.....Cost,	4,005.65	
Payments on Arizona Lands Option—in name of A. S. Greig, Trustee.....	32,139.41	
		564,822.43

Value of Rail and Material leased to—

Gideon & Anderson.....	\$12,965.20
Boynton Land & Lumber Co.....	8,446.70
Darling (L. E. Kelch).....	1,475.00
Edward Hely .....	2,345.79
Chicago Mill & Lbr. Co.....	106.00
Ohio Hardwood Lbr. Co.....	416.78
Geo. McBride .....	1,937.50
M. E. Leming.....	6,709.45
Pascola Stave Co.....	3,520.00
Pascola Lumber Co.....	338.50
Three State Lumber Co.....	609.25
Brown Stave Co.....	1,889.98
Topeka Land & Timber Co.....	1,297.82
Missouri Lumber & Mining Co.....	56,788.64

Baker Lumber Co.....	18,034.49
Cache Valley Railroad.....	7,023.10
Chapman & Dewey Lumber Co.....	963.30
[fol. 680] Central Coal & Coke Co.....	1,314.54
Wilson & Beall.....	3,849.62
Weir Coal Company.....	701.02
Springfield Lumber & Cooperage Co.....	139.70
Ash Grove White Lime Association.....	91.03
Bokhoma & Northern Ry.....	4,005.02
Frisco Lumber Co.....	13,167.34
Pine Tree Lumber Co.....	7,912.95
Portland Cement Co.....	2,750.79
Michard Mfg. Co.....	10.26
Pine Belt Lumber Co.....	30,191.10
Manchester Lumber Co.....	774.79
O. K. & M. Interurban Ry.....	11,042.92
Kyle & Jacquith.....	334.15
Choctaw Lumber Co.....	75,054.58
Bates & Gillespie.....	5,015.57
R. R. Hammond.....	160.21
Puxico Mining Co.....	206.03
Texas, Okla. & Eastern R. R. Co.....	45,449.16
Portland Cement Co. (Cape Girardeau)....	163.53
Fisher Lumber Co.....	2,236.46
Gideon & North Island R. R. Co.....	4,953.10
DeSoto Gravel Co.....	1,579.74
Holley Matthews Mfg. Co.....	743.72
Barney & Hines.....	18,682.86
Garvin & Northwestern Ry.....	2,089.37
J. A. Cotner.....	830.50
Universal Sand Co.....	421.35
Mills-Shoals Cooperage Co.....	36.79

## Bills Receivable:

358,775.70

Crescent Hotel Company.....	\$759.90
Crescent Hotel Company.....	3,799.50
St. Louis, Kennett & Southeastern R. R. Co.	5,000.00
St. Louis, Kennett & Southeastern R. R. Co.	5,000.00
St. Louis, Kennett & Southeastern R. R. Co.	7,150.00
Cassville & Western Ry. Co.....	1,600.02
St. Louis, San Francisco & Texas Ry. Co...	1,142,318.09
Crescent Hotel Co.....	1,329.83
C. G. Jones.....	500.00
Choctaw Lumber & Veneer Co.....	2,419.50
Garvin & Northwestern Ry. Co.....	1,506.00
W. T. Quimley and J. C. Peal.....	105.34
Kansas Southwestern Ry. Co.....	65,000.00
Center Freeze Ice Co.....	233.38
Crawford County Mining Co.....	10,916.82
Kansas City & Memphis Ry. Co.....	2,500.00
Kansas City & Memphis Ry. Co.....	2,500.00
Wm. F. Sprague and Jno. Closner.....	119,057.54
Intermittent Vacuum Pre-cooling Co.....	17,000.00
Crawford County Mining Co.....	1,242.63
Kansas Southwestern Ry. Co.....	5,000.00
L. D. Blaun.....	165.00
Intermittent Vacuum Pre-cooling Co.....	1,500.00
Crawford County Mining Co.....	1,000.00
[fol. 681] Crawford County Mining Co.....	133.13
Intermittent Vacuum Pre-cooling Co.....	510.00
Shattinger Piano & Music Co.....	50.00

Shattinger Piano & Music Co.....	50.00	
Shattinger Piano & Music Co.....	50.00	
Shattinger Piano & Music Co.....	50.00	
Shattinger Piano & Music Co.....	50.00	
Shattinger Piano & Music Co.....	50.00	
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Shattinger Piano & Music Co.....	50.00	
Shattinger Piano & Music Co.....	50.00	
Shattinger Piano & Music Co.....	50.00	
Shattinger Piano & Music Co.....	50.00	
Intermittent Vacuum Pre-cooling Co.....	1,350.00	
New Mexico and Arizona Land Co.....	28,563.79	
C. & E. I. R. R. Co.....	100,000.00	
		1,528,761.07

## Traffic Balances:

Ticket .....	\$45,827.10	
Freight .....	1,356,424.02	
Car Service .....	20,455.06	
		1,422,706.78
Due from Agents and Conductors.....		936,534.93
Due from U. S. Post Office Department.....		73,822.87
Due from Companies and Individuals.....		2,954,457.29

## State and County Scrip:

Oklahoma .....	\$658.54	
Missouri .....	2,367.53	
Arkansas .....	712.40	
		3,738.47

## Cash Advances:

To Frisco Construction Co.....	\$762,606.72
To Frisco Refrigerator Line.....	45,521.76
To New Orleans, Texas & Mexico R. R. Co.	657,304.41
To St. Louis, San Francisco & Texas Ry. Co.	15,621.15

## To A. T. Perkins, Trustee:

Heyser Austwell Extension, Victoria Ex- tension .....	110,297.53
San Benito & Rio Grande Valley Ry., Brownsville, St. & Interurban Ry.....	924,814.73
	2,516,166.30

## Cash Advances Account Working Funds:

Southern Weighing & Inspection Bureau...	\$70.50
Southern Weighing & Inspection Bureau (K. C. M. & B.).....	141.00
Western Trunk Line Committee.....	152.29
Western Trunk Line Committee (K. C. F. S. & M.) .....	206.57
[fol. 682] Western Ry. Weighing & Inspection Bureau .....	1,222.50
Western Ry. Weighing & Inspection Bureau (K. C. F. S. & M.).....	15.00
So. West Miss. Valley Frt. Rate Com. (K. C. M. & B.).....	50.00
Southern Iron Committee.....	35.00
Memphis Cotton Committee.....	40.95

St. Louis Ass'n of Gen. Pass. & Ticket Agents	23.81	
Gen. Mgrs. Ass'n of the Southwest.....	25.00	
Southern Classification Committee.....	67.50	
Joint Validating Agency.....	70.08	
Western Classification Committee.....	487.05	
Ark. Car Service Association.....	54.62	
Railroad Committee.....	14.13	
Trans-Continental Freight Bureau.....	20.00	
Amer. Ass'n of R. R. Superintendents.....	49.59	
Western Passenger Association.....	149.44	
Transit Inspection Bureau.....	50.00	
Trans-Continental Passenger Association...	25.00	
S. L. Oliver, Memphis, Tenn.....	14,733.29	
C. J. Snook, Birmingham, Ala.....	5,622.61	
J. R. Buchanan, Amory, Miss.....	1,205.87	
C. K. Clayton, Pratt City, Ala.....	204.68	
J. R. Drift, Springfield, Mo.....	599.57	
J. Z. Roraback, Kansas City, Mo.....	3,194.20	
F. T. Coffin, Hugo, Okla.....	1,034.51	
D. W. Ramsey, Glen Allen, Ala.....	200.00	
T. D. Heed.....	4,931.16	
L. M. Harris.....	265.00	
H. D. Teed.....	1,409.28	
I. T. Cook.....	29,715.00	
Frank Anderson.....	200.00	
F. G. Jonah.....	500.00	
Claims Attorney.....	6,948.70	
E. C. Northrup.....	86.60	
Wichita Union Stock Yds. & Pkg. House		
Trk. Ass'n.....	2,000.00	
Birmingham Terminal Co.....	700.00	
		76,580.50
Insurance paid in advance.....		50,612.71
Frisco Building, Water, paid in advance.....		357.42
Rentals paid in advance:		
To A. T. & S. F. Ry., Facilities.....	\$5.65	
To Missouri Pacific Ry. Tracks, Springfield.	121.75	
To J. B. Webb and S. H. Violet, Land, Okla-		
homa.....	34.41	
To Hobart Mill & Elevator Co., Land, Kan-		
sas.....	13.77	
To E. Hart, Land, Jonesboro.....	.86	
To Illinois Southern Ry., Depot, Ste.		
Genevieve.....	.68	
To Wabash R. R. Tracks, St. Louis.....	406.80	
To S. Thomas, Land, Oklahoma.....	29.70	
To A. T. & S. F. Ry., Tracks, Pittsburg....	35.87	
To Missouri Pacific Ry., Tracks, Pacific....	51.96	
To F. L. Billingsby, Land, Caruthersville..	104.29	
To Emily Keyser, Land, St. Louis.....	294.71	
To Geo. W. Riggs, Land, St. Louis.....	294.71	
To Geo. S. Winthrop, Land, St. Louis.....	224.43	
To Dillon & Randolph, Land, St. Louis.....	251.39	
		1,870.98

[fol. 683] The following Securities and Property pledged for short-time loans, and which will revert to Receivers when loans are paid off:

St. L. & S. F. R. R. Co., Gen. Lien Mtg 5% Bonds.....	Par Value, 81,779,000.00
St. L. & S. F. R. R. Co., N. O. T. & M. Division 1st Mtg. 5% Bonds.....	Par Value, 200,000.00
St. L. & S. F. R. R. Co. Crfts. for C. & E. I. Ry. Common Stock.....	Par Value, 2,500,000.00
St. L. & S. F. R. R. Co. Crfts. for K. C. F. S. & M. Ry. Prfd. Stock.....	Par Value, 1,490,000.00
N. M. & A. Land Co., Capital Stock and Bonds .....	Par Value, 13,000,000.00
Kirby Lumber Co., Capital Stock.....	Par Value, 1,600,000.00
N. O. T. & M. R. R. Co., Capital Stock.....	Par Value, 2,000,000.00
Promissory Notes of N. O. T. & M. R. R.....	Par Value, 4,229,185.00
S. B. & R. G. V. Int. Ry., Capital Stock.....	Par Value, 50,000.00
Promissory Note of S. B. & R. G. V. I. Ry.....	475,000.00

Promissory Notes for Dallas Terminal Property, as follows:

Adam H. Davidson.....	\$1,406.25
Adam H. Davidson.....	1,406.25
Adam H. Davidson.....	1,406.25
Adam H. Davidson.....	1,406.25
Adam H. Davidson.....	5,625.00
Paul S. Miller.....	1,406.25
Paul S. Miller.....	1,406.25
Paul S. Miller.....	1,406.25
Paul S. Miller.....	1,406.25
Paul S. Miller.....	5,625.00
Henry Dorsey .....	1,640.65
Henry Dorsey .....	1,640.65
Henry Dorsey .....	1,640.65
Henry Dorsey .....	1,640.65
Henry Dorsey .....	1,640.65
Henry Dorsey .....	6,562.50
John E. Poindexter.....	1,254.17
John E. Poindexter.....	1,254.17
John E. Poindexter.....	1,254.17
John E. Poindexter.....	1,254.17
John E. Poindexter.....	1,254.17
John E. Poindexter.....	5,016.65
R. L. Spann.....	2,053.10
R. L. Spann.....	2,050.00
R. L. Spann.....	2,050.00
R. L. Spann.....	2,050.00
R. L. Spann.....	8,203.15
Hale Davis .....	1,406.25
Hale Davis .....	1,406.25
Hale Davis .....	1,406.25
Hale Davis .....	1,406.25
[fol. 684] Hale Davis .....	5,625.00
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	9,375.00
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	2,343.75
E. W. Morton, Jr.....	9,375.00
J. J. and A. J. Kline.....	2,051.00

J. J. and A. J. Kline.....	2,051.00	
J. J. and A. J. Kline.....	2,051.00	
J. J. and A. J. Kline.....	2,051.00	
J. J. and A. J. Kline.....	8,202.00	
J. J. and A. J. Kline.....	2,051.00	
J. J. and A. J. Kline.....	2,051.00	
J. J. and A. J. Kline.....	2,051.00	
J. J. and A. J. Kline.....	2,051.00	
J. J. and A. J. Kline.....	8,202.00	
Morton Investment Co.....	2,226.57	
Morton Investment Co.....	2,226.57	
Morton Investment Co.....	2,226.57	
Morton Investment Co.....	2,226.57	
Morton Investment Co.....	8,906.25	
Morton Investment Co.....	2,226.57	
Morton Investment Co.....	2,226.57	
Morton Investment Co.....	2,226.57	
Morton Investment Co.....	2,226.57	
Morton Investment Co.....	8,906.25	
		\$179,251.74
Property in Dallas, Tex., in name of W. F. Evans, Trustee .....	Cost	17,027.41
Property in Dallas, Tex., in name of Red River, Texas & So. Ry.....	Cost	177,284.59
New Iberia & Northern R. R., 102.15 miles and equipment, including Capital Stock and Bonds issued or to be issued .....		1,594,299.09
New Iberia & Northern R. R. Syndicate, Participation Purchase .....		140,142.38
Iberia, St. Mary & Eastern Ry., approx. 54 miles and Equipment, including Capital Stock and Bonds issued or to be issued.....		898,789.74
Iberia, St. Mary & Eastern R. R. Syndicate, Participation Purchase .....		102,555.86
		<hr/> 30,432,535.90

[fol. 685]

## Statement "J"

List of Securities Transferred to Receivers Which are Either Worthless or are Mummints of Title or Belong to Other Companies, as Indicated

The following Stock Certificates, etc., were on file with the St. Louis Union Trust Co.:

Cape Girardeau & Northern R. R. Stock.....	1,000 shares, par value,	\$100,000.00	Property of Cape Gir. Nor. R. R. Co.
Louisiana Purchase Exposition Stock.....	3,500 shares, par value,	35,000.00	Worthless.
Union Terminal Co. (Dallas) Stock.....	30 shares, par value,	3,000.00	Property of St. L. S. F. & T. Ry. Co.
Western Townsite Co. Stock.....	245 shares, par value,	24,500.00	Property of N. O. T. & M. R. R. Co.
Taylor City Belt Ry. Co. Stock.....	297 shares, par value,	29,700.00	Worthless.
St. Louis Light Artill. Co. (not now on books)	20 shares, par value,	1,000.00	Worthless.
St. Louis Music Hall Assn. Stock (not now on books)	120 shares, par value,	0.00	Worthless.
Ozark Land Company Stock (not now on books)	2,995 shares, par value,	299,500.00	Worthless.
Logan Real Estate Co. Stock (not now on books)	76 1/2 shares, par value,	7,625.00	Worthless.
Eureka Imp. Co. Stock (not now on books)	5,377 shares, par value,	134,425.00	Worthless.
St. Louis & Nor. Ark. Ry. (Ctf. of Deposit)	200 shares, par value,	20,000.00	Worthless.
Kansas, Okla. & Gulf Ry. Co. (not on books), Com.	200 shares, par value,	20,000.00	Mummint of Title.
Kansas, Okla. & Gulf Ry. Co., (not on books), Pfd.	380 shares, par value,	19,450.00	Mummint of Title.
Kansas City, O. & S. Ry. Co. Stock (not on books)	19,991 shares, par value,	1,999,100.00	Mummint of Title.
Ark. & Okla. Ry. Co. Stock (not on books)	2,995 shares, par value,	299,500.00	Mummint of Title.
Okla. City Terminal Ry. Co. Stock.....	995 shares, par value,	99,500.00	Mummint of Title.
Kansas City, Ft. S. & M. Ry. Co. Stock (not on books), contract for	27,500 shares, par value,	2,750,000.00	Mummint of Title.
[fol. 686] K. C. F. S. & M. Ry. Co. Stock (not on books)	101,490 shares, par value,	10,149,000.00	Mummint of Title.
Current River R. R. Co. Stock (not on books), contract for	16,955 shares, par value,	1,695,500.00	Mummint of Title.

The following Stock Certificates are in the hands of F. H. Hamilton, Treasurer :

Ark. Valley & Western R. R. Co. ....	9 shares stock, par value,	\$900.00	Minut of Title.
Blackwell, Enid & S. W. Ry. ....	7 shares stock, par value,	700.00	Minut of Title.
Payetteville & L. R. R. Co. ....	45 shares stock, par value,	4,500.00	Minut of Title.
Little Rock & Tex. Ry. Co. ....	35 shares stock, par value,	3,500.00	Minut of Title.
Memphis & New Orleans Ry. Co. (subscriptions to) ....	3,575 shares stock, par value,	357,500.00	Minut of Title.
Muskogee City Br. Co. (not on books) ....	6,000 shares stock, par value,	150,000.00	Minut of Title.
Pittsburg & Col. Ry. Co. ....	25 shares stock, par value,	2,500.00	Minut of Title.
Railway Com. & Imp. Co. (not on books) ....	6,500 shares stock, par value,	1,300.00	Worthless.
Red River, Tex. & Son. Ry. Co. (not on books) ....	7 shares stock, par value,	700.00	Minut of Title.
Springfield Connecting Ry. Co. ....	35 shares stock, par value,	3,500.00	Minut of Title.
Ft. Smith & Van Buren Br. Co. ....	7 shares stock, par value,	175.00	Minut of Title.
Ft. Smith & Son. Ry. Co. ....	11 shares stock, par value,	1,100.00	Minut of Title.
Joplin Railway Co. ....	9 shares stock, par value,	900.00	Minut of Title.
St. L. Wichita & West. Ry. Co. ....	5 shares stock, par value,	500.00	Minut of Title.
St. Louis, Ark. & Tex. Ry. (consol.) ....	11 shares stock, par value,	1,100.00	Minut of Title.
Springfield & Northern Ry. Co. ....	15 shares stock, par value,	1,500.00	Minut of Title.
Springfield & Son. Ry. Co. ....	9 shares stock, par value,	900.00	Minut of Title.
St. Louis & Okla. City Ry. Co. ....	9 shares stock, par value,	900.00	Minut of Title.
Frisco, Okla. City & Tex. Ry. Co. (subscriptions) ....	9 shares stock, par value,	900.00	Minut of Title.
Sulphur Springs Ry. Co. ....	40,000.00	Worthless.	
Oklahoma City & Western Ry. Co. ....	12 shares stock, par value,	1,200.00	Minut of Title.
Ozark & Cherokee Central Ry. Co. ....	5 shares stock, par value,	500.00	Minut of Title.
St. Louis, Memphis & S. E. Ry. Co. ....	7 shares stock, par value,	700.00	Minut of Title.
St. Louis & Gulf Ry. Co. ....	9 shares stock, par value,	900.00	Minut of Title.
	8 shares stock, par value,	800.00	Minut of Title.

[fol. 687]

## Memorandum of Securities in St. Louis

The following is result of check of Securities in hands of Treasurer, August 30th, 1913, by Mr. Krabe, Mr. Jenny, myself and other members of Committee:

Kansas, Southwestern Ry. Co. ....	Stock—Par Value	\$181,000.00
There is held by Treasurer a Certificate of Beneficial Interest for 3,620 shares of which the Frisco owns one-half, signed by Central Trust Co., New York.		
Birmingham Terminal Co. ....	Stock—Par Value	25,000.00
St. Louis Union Trust Co. holds Certificates for 249 shares.		
F. H. Hamilton holds Certificates for 1 share.		
Kansas City Terminal Ry. Co. ....	Stock—Par Value	100,000.00
F. H. Hamilton holds Certificates for 5 shares.		
F. H. Hamilton holds Pioneer Trust Co.'s receipt for (in trust) 995 shares.		
Wichita Union Terminal Ry. Co. ....	Stock—Par Value	25,000.00
F. H. Hamilton holds 2 shares.		
F. H. Hamilton holds Pioneer Trust Co.'s receipt (in trust) for 248 shares.		
Frisko Refrigerator Line .....	Stock—Par Value	5,000.00
All with the St. Louis Union Trust Co.		
Rio Grande Ry. Co. ....	Stock—Par Value	25,000.00
St. Louis Union Trust Co. holds 243 shares.		
F. H. Hamilton holds 7 shares.		
Paris & Great Northern R. R. Co. ....	Stock—Par Value	4,500.00
All with F. H. Hamilton, Treasurer.		
St. Louis, San Francisco & Texas Ry. Co. ....	Stock—Par Value	700.00
All with F. H. Hamilton, Treasurer.		

Kansas City, Ft. Scott & Memphis Ry.	Stock—Par Value	5,500.00
All with F. H. Hamilton, Treasurer.		
Kansas City, Memphis & Birmingham R. R.	Stock—Par Value	1,200.00
All with F. H. Hamilton, Treasurer.		
Kansas City & Memphis Ry. & Br. Co.	Stock—Par Value	500.00
All with F. H. Hamilton, Treasurer.		
St. Louis & San Francisco R. R. Co.	1st Prfd.—Par Value	6,535.10
St. Louis & San Francisco R. R. Co.	2d Prfd.—Par Value	1,364,153.00
St. Louis & San Francisco R. R. Co.	Common—Par Value	149.60
St. L. U. T. Co. holds Certificates, etc., for all 1st Prfd. Stock.		
St. L. U. T. Co. holds Certificates, etc., for all 2d Prfd. Stock.		
St. L. U. T. Co. holds Certificates for \$54.20 Common Stock.		
F. H. Hamilton, Treasurer, holds Certificates for \$95.40 Common Stock.		
There was also held by the St. L. U. T. Co. 17 Certificates of Common Stock in names of Directors, etc., aggregating 75 shares.		
Alexandria, Bayou, Macon & Greenville R. R. Co.	Stock—Par Value	206,600.00
All with F. H. Hamilton, Treasurer.		
Arkansas Northern R. R. Co.	Stock—Par Value	5,500.00
All with F. H. Hamilton, Treasurer.		
[fol. 688] Arkansas Coal & Mining Co.	Stock—Par Value	11,250.00
With St. Louis Union Trust Co.	415 shares	
With F. H. Hamilton, Treasurer	35 shares	
Western Construction Co.	Stock—Par Value	5,000.00
With St. Louis Union Trust Co.	46 shares	
With F. H. Hamilton, Treasurer	4 shares	

## Memorandum of Securities in St. Louis—Continued

New Orleans, Mobile & Chicago R. R. Co. ....	Stock—Par	Value	2,601,870.51
Certificates of New York Trust Co. for	\$2,384,750.00		
With St. Louis Union Trust Co. ....	217,100.00		
With St. Louis Union Trust Co. (scrip) .....	41.00		
			<hr/>
(Over \$20.49)			\$2,601,891.00
Quanah, Acme & Pacific R. R. Co. ....	Stock—Par	Value	60,000.00
With F. H. Hamilton, Treasurer.			
Crescent Hotel Co. ....	Stock—Par	Value	15,198.00
With St. Louis Union Trust Co.			
Hotel Realty Company (Hotel Jefferson) .....	Stock—Par	Value	5,000.00
With St. Louis Union Trust Co.			
Jasper Land Co. ....	Stock—Par	Value	8,666.67
With St. Louis Union Trust Co.			
Star Publishing Co. (Ft. Worth) .....	Stock—Par	Value	200.00
With F. H. Hamilton, Treasurer.			
Kirby Lumber Company .....	Stock—Par	Value	65,000.00
With F. H. Hamilton, Treasurer.			
Brownsville Street & Interurban R. R. Co. ....	Stock—Par	Value	*10,000.00
With St. Louis Union Trust Co.			
*On books as \$5,000.00 (cost).			
Intermittent Vacuum Pre-cooling Co. ....	Stock—Par	Value	60,000.00
With St. Louis Union Trust Co., 5 shares.			
With F. H. Hamilton, Treasurer, 595 shares.			

St. Louis & San Francisco R. R. Co.	Bonds—Par Value	260,146.04
General Lien 5% Scrip (not on file)	\$216.03	
Refunding 4s with St. L. U. T. Co.	5,000.00	
N. O. T. & M. Dvn. 5s with St. L. U. T. Co.	254,000.00	
N. O. T. & M. (Scrip), not on file	930.01	
St. L. & S. F. R. R. Consolidated Bond Scrip		159.00
St. Louis, Memphis & Southeastern R. R.	Bonds—Par Value	125.00
Scrip (not on file).		
West Tulsa Belt Ry.—1st Mtg. 5s	Bonds—Par Value	30,500.00
With St. Louis Union Trust Co.		
Cape Girardeau & Northern R. R.—1st Mtg. 5s	Bonds—Par Value	16,000.00
With St. Louis Union Trust Co.		
St. Louis Club—2d Mtg. 5s	Bonds—Par Value	3,000.00
With St. Louis Union Trust Co.	\$2,800.00	
Sold and accounted for July 30, 1913	200.00	
St. L. & S. F. R. R. Co., Crtfs. for C. & E. I. Common Stock	Par Value	20,000.00
With St. Louis Union Trust Co.		

[fol. 689] The following Stock Certificates, etc., were on file with the St. Louis Union Trust Co.:  
Recorded on Books of Company as Munits of Title and of no Value.

Cape Girardeau & Northern R. R. Stock	1,000 shares, not Frisco property, Par Value,	\$100,000.00
Louisiana Purchase Exposition Stock	3,500 shares, not Frisco property, Par Value,	35,000.00
Union Terminal Co. (Dallas) Stock	30 shares, not Frisco property, Par Value,	3,000.00
Western Townsite Co. Stock	245 shares	
Memphis Terminal Ry. Co. Stock	90 shares	
	Par Value,	9,000.00

## Memorandum of Securities in St. Louis—Continued

Taylor City Belt Ry. Co. Stock	297 shares, not Frisco property, Par Value,	29,700.00
St. Louis Light Artillery Co. Stock (not now on books)	20 shares, not Frisco property, Par Value,	1,000.00
St. Louis Music Hall Ass'n Stock (not now on books)	120 shares, not Frisco property, Par Value,	3,000.00
Ozark Land Co. Stock (not now on books)	2,995 shares, not Frisco property, Par Value,	299,500.00
Logan Real Estate Co. Stock (not now on books)	76¼ shares, not Frisco property, Par Value,	7,625.00
Eureka Imp. Co. Stock (not now on books)	5,377 shares, not Frisco property, Par Value,	134,425.00
St. Louis & North Ark. Ry. Co. (Cer- tificates of Deposit)	200 shares, not Frisco property, Par Value,	20,000.00
Kansas, Okla. & Gulf Ry. Co. Stock (not now on books)	200 shares, Common Par Value,	20,000.00
Kansas, Okla. & Gulf Ry. Co. Stock (not now on books)	389 shares, Preferred Par Value,	19,450.00
Kansas City, O. & S. Ry. Co. Stock (not now on books)	19,991 shares Par Value,	1,999,100.00
Arkansas & Oklahoma Ry. Co. Stock (not now on books)	2,995 shares Par Value,	299,500.00
Oklahoma City Terminal Ry. Co. Stock	995 shares Par Value,	99,500.00
Winchell Townsite Co. Stock	200 shares Par Value,	2,000.00

Kansas City, Ft. S. & M. R. R. Co. Stock (not on books) contract for	27,500 shares	Par Value, 2,750,000.00
K. C. F. S. & M. R. R. Co. Stock (not on books)	101,490 shares	Par Value, 10,149,000.00
Current River R. R. Co. Stock (not on books) contract for	16,055 shares	Par Value, 1,605,500.00

[fol. 690] The following Stock Certificates are in the hands of F. H. Hamilton, Treasurer: Recorded on Books of Company as Muniments of Title and of no Value.

Ark. Valley & Western R. R. Co.	9 shares stock,	Par Value,	\$900.00
Blackwell, Enid & Southwestern Ry.	7 shares stock,	Par Value,	700.00
Fayetteville & L. R. R. Co.	45 shares stock,	Par Value,	4,500.00
Frisco Construction Co.	50 shares stock,	Par Value,	5,000.00
Little Rock & Tex. Ry. Co.	35 shares stock,	Par Value,	3,500.00
Memphis & New Orleans Ry. Co. (subscriptions to)	3,575 shares stock,	Par Value,	357,500.00
Memphis R. R. Terminal Co.	10 shares stock,	Par Value,	1,000.00
Muskogee City Br. Co. (not on books)	6,000 shares stock,	Par Value,	150,000.00
New Orleans Terminal Co.	15 shares stock,	Par Value,	1,500.00
Pittsburg & Col. Ry. Co.	25 shares stock,	Par Value,	2,500.00
Railway Con. & Imp. Co. (not on books)	6,500 shares stock,	Par Value,	1,300.00
Red River, Tex. & Sou. Ry. Co. (not on books)	7 shares stock,	Par Value,	700.00
Springfield Connecting Ry. Co.	35 shares stock,	Par Value,	3,500.00
Ft. Smith & Van Buren Br. Co.	7 shares stock,	Par Value,	175.00
Ft. Smith & Sou. Ry. Co.	11 shares stock,	Par Value,	1,100.00
Joplin Railway Co.	9 shares stock,	Par Value,	900.00
St. L., Wichita & West Ry. Co.	5 shares stock,	Par Value,	500.00

## Memorandum of Securities in St. Louis—Continued

St. Louis, Ark. & Tex. Ry. (consol.)	11 shares stock, Par Value,	1,100.00
Springfield & Northern Ry. Co.	15 shares stock, Par Value,	1,500.00
Springfield & Southern Ry. Co.	9 shares stock, Par Value,	900.00
St. Louis & Oklahoma City Ry. Co.	9 shares stock, Par Value,	900.00
Frisco, Okla. City & Tex. Ry. Co. (subscriptions)		40,000.00
Sulphur Springs Ry. Co.	12 shares stock, Par Value,	1,200.00
Okla. City & Western Ry. Co.	5 shares stock, Par Value,	500.00
Ozark & Cherokee Central Ry. Co.	7 shares stock, Par Value,	700.00
St. Louis, Memphis & SE. Ry. Co.	9 shares stock, Par Value,	900.00
St. Louis & Gulf Ry. Co.	8 shares stock, Par Value,	800.00

I, W. P. Newton, hereby certify that the Securities listed above and on the two preceding sheets, numbered one (1) and two (2), were, on August 30th, last, checked by me, together with Mr. Krabe, Mr. Jenny and other members of the Committee, and found to be in possession of the Treasurer for the Receivers, or deposited by him in safe deposit box of the St. Louis Union Trust Company.

St. Louis, Sept. 17th, 1913.

W. P. Newton.

Subscribed and sworn to before me this 17th day of September, 1913. Kate L. Worley.  
Notary Public. My commission expires November 20th, 1915.

[fol. 691] At this point, the defendant and the St. Louis-San Francisco Railway Company by counsel, admitted that neither the receivers, the reorganization managers, the defendant railroad company, nor the St. Louis-San Francisco Railway Company, ever scheduled the claims of these interveners, in the schedule of claims filed in the receivership case.

Thereupon the interveners rested their case in rebuttal.

This was all of the evidence offered and introduced upon the hearing of said interventions before the Special Master.

Approved June 14, 1924.

(Sgd.) Walter H. Sanborn, Senior Circuit Judge.

June —, 1924.

Approved 6-11-24. W. F. Evans, E. T. Miller, Attys. for Deft. & Ry. Co.

Endorsed: Filed, February 25, 1922. Jas. J. O'Connor, Clerk.

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#### IN UNITED STATES DISTRICT COURT

#### ORDER FURTHER EXTENDING TIME TO FILE TRANSCRIPT— July 5, 1924

And afterwards, to-wit, on July 8th, 1924, the following further proceedings were had and appear on file and of record in said cause, to-wit:

Upon consideration of the stipulation filed herein this day by solicitors for the interveners, E. B. Spiller and E. B. Spiller, et al., and the solicitors for the St. Louis & San Francisco Railroad Company, and — San Francisco Railway Company, it is hereby Ordered that the interveners' time for filing their transcript of appeal herein be extended sixty (60) days from the 8th day of July, 1924.

(Signed) Kimbrough Stone, Judge.

[fol. 692] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION FOR OMISSION OF CERTAIN MATTERS FROM  
TRANSCRIPT—Filed August 26, 1924

Consolidated under the Style

Consolidated Cause, Final, No. 4174

“In the Matter of the Interventions of E. B. SPILLER et al.

It is hereby stipulated and agreed by and between the above named interveners and the St. Louis & San Francisco Railroad Company and the St. Louis-San Francisco Railway Company, parties herein;

1. That the Clerk of this Court may omit from the transcript of the record and proceedings in this cause, to be filed in the United States Circuit Court of Appeals, Eighth Circuit, Exhibit A, attached to the Bill of Complaint, said Exhibit A being a memorandum concerning the funded and other fixed interest bearing debts, and that the Clerk may substitute in lieu thereof the language “Here follows Exhibit A, a memorandum concerning the funded and other fixed interest bearing debt.”

2. That the Clerk of this Court may omit from the transcript of the record and proceedings in this cause, to be filed in the United States Circuit Court of Appeals, Eighth Circuit, that portion of an exhibit attached to the intervening petition of E. B. Spiller, et al., No. 402, Exhibit A beginning at the top of page 4 and ending at the bottom of page 51; that the same portion of an exhibit attached to the intervening petition of E. B. Spiller, No. 403, also designated Exhibit A, may be omitted; that the same portion of said document, designated Exhibit A, may be [fol. 693] omitted whenever called for elsewhere in the record and proceedings in this cause; and that the Clerk may substitute in lieu thereof the language; “pages 4 to 51, both inclusive, of Exhibit A, which are here omitted, set forth the names of claimants and the amounts of their claims against carriers other than the St. Louis & San Francisco Railroad Company.”

3. That the Clerk of this Court may omit from the transcript of the record and proceedings in this cause, to be filed in the United States Circuit Court of Appeals, Eighth Circuit, that part of Exhibit B, a deed, annexed to interveners' Exhibit 22, the order confirming the sale, beginning on page 6, line 25, and ending at the top of page 45, and that the Clerk may insert in lieu thereof the language: "Here follows description of said real estate."

(Signed) John S. Leahy, Walter H. Saunders, D. A. Murphy, S. H. Cowan, Attorneys for Interveners, W. F. Evans, E. T. Miller, Attorneys for St. Louis & San Francisco Railroad Company and St. Louis-San Francisco Railway Company.

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Clerk's Certificate to Transcript omitted in printing.

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[fol. 694] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT

No. 6786

E. N. SPILLER et al., Appellants,

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY et al.,  
Appellees

STIPULATION AS TO PRINTING RECORD—Filed February 20,  
1925

It is hereby stipulated by and between counsel for appellants and appellees in the foregoing cause, that in printing the transcript in said cause in the United States Circuit Court of Appeals for the Eighth Circuit, the following changes shall be made in the typewritten transcript:

1. Omit from the transcript pages 241 to 260, both inclusive, containing the exceptions of the St. Louis-San Francisco Railway Company, to Report of Special Master, and substitute in lieu thereof the following:

"The exceptions of the St. Louis-San Francisco Railway Company to said report of said special master are identical with the exceptions of the St. Louis & San Francisco Railroad Company, to said report except for the change in name, and except that in exceptions number 48, 49, 50, 51 and 52, the name St. Louis-San Francisco Railway Company is substituted for the word 'Exceptor'."

2. Omit from the transcript, pages 316 to 320, both inclusive, the bond given by appellants and insert in lieu thereof the following:

[fol. 695] "The appellants gave an appeal bond in this case in due form of law, which was properly allowed and approved by the Court."

3. Omit from the transcript, pages 325 to 331, the various orders extending time for filing the transcript herein, and substitute in lieu thereof, the following:

"By orders duly entered of record, the time for filing the transcript herein was extended from April 17, 1923 to May 9, 1924."

4. Omit Exhibit 5, the opinion of the Interstate Commerce Commission, reported in 11 I. C. C. 296, Transcript pages 339 to 408, both inclusive, and insert in lieu thereof, the following:

"In order to avoid the expense of printing, the decision of the Interstate Commerce Commission, in the case of The Cattle Raisers' Association of Texas vs. The M. K. & T. Railway Company, et al., No. 732, 11 I. C. C., p. 296, reference is hereby made to said case, reported in said volume, and decided August 16, 1905."

5. Omit pages 447 to 465, both inclusive, and print in lieu thereof the following:

"That said petition, Exhibit 7, is identical mutatis mutandis with Exhibit 6, supra, except as to amounts and names, and covers the same period of time."

6. Omit the tabulation as marked on pages 613 and 614 of the transcript, being part of the report of the Missouri Public Service Commission in the matter of the application of J. W. Seligman & Company et al., in the reorganization of

the St. Louis & San Francisco Railroad Company, and print in lieu thereof the following:

"Printed, supra, in full, in application to Missouri Public Service Commission."

7. Omit tabulations and statements as marked on pages 614 to 617, inclusive, of transcript, being part of said report of said Missouri Public Service Commission, beginning with the words "Prior Lien Mortgage Gold Bonds" on page 614, and ending with the figures "\$250,000,000" on page 617, and print in lieu thereof the following:

"Printed, supra, in full, in application to Missouri Public Service Commission."

[fol. 696] 8. Omit tabulations and statements as marked, Tr. pp. 617 to 620, both inclusive, beginning with the words "Prior Lien Mortgage Gold Bonds" on page 617, and ending with the figures \$53,000,000, top of page 620, and print in lieu thereof the following:

"Printed, supra, in full, in application to Missouri Public Service Commission."

9. Omit tabulations as marked, Tr. pages 620, 621, both inclusive, beginning with the words "Receiver's Certificate \$3,000,000." Tr. p. 620, and ending with the figures "\$25,000,000" on top of page 621, and print in lieu thereof the following:

"Printed, supra, in full, in application to Missouri Public Service Commission."

10. Omit tabulation as marked, Tr. page 621, beginning with words "Fixed Charge Obligations", and ending with the words "Total Stock", and print in lieu thereof the following:

"Printed, supra, in full in Reorganization Plan and Agreement, and in application to Missouri Public Service Commission."

11. Omit tabulation as marked, Tr. page 622, and print in lieu thereof the following:

"Printed, supra, in full, in application to Missouri Public Service Commission."

12. Omit tabulation as marked, Tr. page 623, and print in lieu thereof the following:

“Printed, supra, in full, in application of Missouri Public Service Commission.”

13. Omit tabulated description of properties, as marked, Tr. pages 760 to 765, both inclusive, and print in lieu thereof the following:

“Here follows detailed description of property covered by the Refunding Mortgage.”

14. Omit tabulated description of properties as marked, beginning on bottom of Tr. page 765, down to and including the figures \$140,000, on Tr. page 777, and print in lieu thereof the following:

[fol. 697] “Here follows detailed description of property covered by The General Lien Mortgage.”

15. Omit description of properties as marked, Tr. pages 840 to 856, both inclusive, and print in lieu thereof the following:

“Here follows [detained] description of the properties, included in the Deed, incorporated in the decree confirming the sale, as Exhibit A.”

16. Omit Tr. pages 867 to 877, both inclusive, as marked, and print in lieu thereof the following:

“Here follows the signatures and acknowledgments in proper form of all parties to said Deed, Exhibit A.”

17. Omit as marked, Tr. pages 889 to 895, both inclusive, and print in lieu thereof the following:

“Here follows the signatures and acknowledgments, in proper form, of all parties to Exhibit B, incorporated in said decree, confirming the sale.

S. H. Cowan, D. H. Murphy, John S. Leahy, Walter H. Saunders, Attorneys for Appellants. W. F. Evans, E. T. Miller, Attorneys for Appellees.

Dated and Signed in Triplicate this 19th day of February, 1925.

[File endorsement omitted.]

[fol. 698] Appearances of Counsel omitted in printing.

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[fol. 699] Minute entry of argument and submission December 8, 1925, omitted in printing.

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[fol. 700] IN UNITED STATES CIRCUIT COURT OF APPEALS,  
EIGHTH CIRCUIT, MAY TERM, A. D. 1926

No. 6786

E. B. SPILLER et al., Appellants

vs.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY et al.,  
Appellees

Appeal from the District Court of the United States for the  
Eastern District of Missouri

Before Stone, Kenyon and Booth, Circuit Judges

Mr. David A. Murphy and Mr. Walter H. Saunders (Mr. S. H. Cowan and Mr. John S. Leahy were with them on the brief), for appellants.

Mr. E. T. Miller (Mr. W. F. Evans was with him on the brief), for appellees.

OPINION—Filed June 24, 1926

KENYON, Circuit Judge, delivered the opinion of the Court:

The history of this controversy extends over a period of nearly twenty years. It is difficult to cover the facts in a brief narrative. However we endeavor so to do. The findings of the Master and the statement by the trial court have little in dispute as to the controlling facts.

In 1903 the St. Louis & San Francisco Railroad Company, appellee, (hereafter designated as the Railroad Company) [fol. 701] and other railroads not here involved advanced freight rates on cattle shipments from the state of Texas

and other western states to Kansas City, Chicago, St. Louis and other primary markets three cents per hundred weight. These rates were challenged by divers parties as unreasonable, unjust and unlawful, the special challenge being by the Cattle Raisers' Association of Texas.

The Interstate Commerce Commission (hereinafter called the Commission) on August 16, 1905, found the rates to the extent of the increase of three cents per hundred weight to be unjust and unreasonable. 11 I. C. C. Rep. 296.

Prior to the passage by the Congress of what is known as the Hepburn Act, June 29, 1906, there was no power in the Commission to prescribe rates, for transportation of property. After this act became effective a petition was filed with the Commission to reopen the case.

April 14, 1908 (13 I. C. C. Rep. 418), the Commission reaffirmed its position of August 16, 1905, and again pronounced the rates excessive and unreasonable, and made an order prescribing rates for the future to take effect November 17, 1908, being the rates existing prior to 1903, viz., three cents less per hundred weight. Questions of reparation to be allowed only from August 29, 1906, were reserved by the Commission to be subsequently dealt with. This order was contested in the courts by the Railroad Companies.

Appellant Spiller (hereinafter with others designated as interveners) presented claims for reparation based on said excessive rates exacted from August 29, 1906, to November 17, 1908, which were heard from time to time, and on January 12, 1914, the Commission made an order in which it directed the defendant Railroad Company to pay to intervener Spiller, who was assignee of a large number of claims, the sum of \$27,682.75 plus interest to June 15, 1914, and also to pay to other shippers who had not assigned their claims to Spiller certain amounts as reparation for the excessive rates aggregating \$3,244.61.

May 27, 1913, on the bill of complaint of North American Company (a general creditor), filed in the United States District Court, Eastern District of Missouri, Receivers were appointed for the Railroad Company, who took over the [fol. 702] general control, management and operation of its properties. A like bill was filed by another creditor on April 3, 1914. After the appointment of the Receivers, and

within the time prescribed by the Act to Regulate Commerce, the orders of reparation made by the Commission in favor of interveners were served upon the Railroad Company and its Receivers. They refused to pay the moneys which the Commission had ordered paid. May 22, 1914, the trustees under the general lien mortgage of the Railroad Company dated August 27, 1907, filed bill for foreclosure. July 9, 1914, the trustees of the Railroad Company's refunding mortgage dated June 20, 1901, filed a bill for foreclosure. The same Receivers theretofore appointed were appointed in these proceedings and the entire matter was consolidated in a single suit entitled "North American Company, Complainant, vs. St. Louis & San Francisco Railroad Company, Defendant, No. 4174, Consolidated Cause Final." The final decree was rendered in the consolidated cause and each of its constituent causes.

On December 29, 1914, intervener Spiller filed suit under the provisions of Section 16 of the Interstate Commerce Act in the District Court of the United States for the Western Division of the Western District of Missouri at Kansas City against the various railroads to enforce payment of the amount and interest that the Commission had ordered paid. The other interveners also filed suit. Attorneys employed by the Receivers appeared in these cases and contested the same. Suits were also filed at Fort Worth and St. Louis by the same parties against the carriers, on the same cause of action, but were subsequently dismissed. Other railroad companies were joined as defendants in the suits at Kansas City, but they are not interested parties here. These cases proceeded to trial, and on August 16, 1916, intervener Spiller recovered judgment in the sum of \$30,212.31 with interest thereon from August 1, 1916, and also judgment for \$3,021.23 as attorney fees to be taxed as costs. The other appellants in this suit (sometimes hereafter designated as other interveners) recovered judgment for \$3,658.55 with interest likewise, and \$364.63 attorney fees to be taxed as costs. Appeal was taken to this court on August 28, 1916, by the attorneys employed by the Receivers of the Railroad Company. The attorneys for the Railway Company were also engaged in the case after November 1, 1916. It was agreed by stipulation that the appeal, while taken only in [fol. 703] the case of E. B. Spiller vs. Missouri, Kansas &

Texas Railway Company et al., should be controlling in the case of E. B. Spiller et al. vs. the same defendants. In the meantime an interlocutory decree had been entered in the receivership suit May 29, 1914, requiring that all claims against the Railroad Company be filed by October 1, 1914. These orders were extended and the final time for filing claims expired February 1, 1916. March 31, 1916 the final decree of foreclosure providing for sale of the Railroad Company's property was entered, and on July 16, 1916 the property was sold either to or for the St. Louis & San Francisco Railway Company (hereinafter called the Railway Company). This sale was confirmed on August 29, 1916, which was thirteen days after the judgments were rendered in the District Court at Kansas City before referred to, and the day after the Railroad Company had appealed from the same to this court. The Railway Company took charge of the properties about November 1, 1916. Prior to August 29, 1916, the date of the confirmation of the sale, interveners had no notice or knowledge of any order made by the court fixing the time within which claims could be filed in the cause. Notice of said order was made by publication, but no publication was made in Texas or Oklahoma where all but a few of the claimants lived.

On August 29, 1916, attorneys for interveners gave notice in open court that they had claims against the defendant Railroad Company for illegal freight exactions; that the claims had been reduced to judgment in the District Court of the United States for the Western Division of the Western District of Missouri; that an appeal was being taken from said judgment by the Railroad Company and other carriers, and that the contention of the interveners was that their claims were prior in right and superior in equity to the claims of all other creditors, including bondholders. A written notice to the same effect was also served at the same time upon Henry W. Taft, attorney for the reorganization committee, and the Railway Company; also upon the attorney for the Receivers and the attorney for the Railroad Company.

Under the plan of reorganization securities of the new company were to be exchanged for securities of the old. The original plan was not approved by the Public Service [fol. 704] Commission of Missouri, or at least it required

modification thereof, and under the accepted plan of reorganization the stockholders of the old company were to receive and did receive more than \$45,000,000.00 of the stock of the new company as representing their equity in the property without the payment of anything therefor. There is some claim in argument that this is not correct, but the record we are satisfied sustains it as a fact. A large amount of cash was turned over to the Receivers by the Railroad Company (approximately \$300,000.00) much in excess of the claims of interveners, and a large amount of cash was also turned over by the Receivers to the reorganized Railway Company largely in excess of the claims of interveners.

October 29, 1917, this court reversed the judgment of the District Court of the United States for the Western Division of the Western District of Missouri and remanded the case for a new trial, its mandate being filed March 27, 1918, the judgment having been modified to some extent on March 11, 1918. Intervenors then took the case to the Supreme Court of the United States by certiorari.

On May 17, 1920, the Supreme Court of the United States reversed the judgment of this court and affirmed the judgment of the District Court for the Western Division of the Western District of Missouri, the mandate of the Supreme Court being filed in that court June 6, 1920. Applications were filed in that court for additional attorney fees, which were allowed.

December 2, 1920, intervenors applied to the District Court of the Eastern Division of the Eastern District of Missouri for leave to file in the consolidated receivership cases intervening petitions setting forth their claims against the Railroad Company for illegal exactions of freight rates for which they had secured judgment in the United States District Court for the Western District of Missouri on August 16, 1916.

On February 12, 1921, the court granted the applications, and on March 10, 1921, granted applications to file supplemental intervening petitions. The matter was referred to a Master, who heard the same and made extended findings of fact and conclusions of law, his recommendations being that judgment be entered in favor of intervening petitioner, E. B. Spiller, in the sum of \$30,212.31 with interest at six

[fol. 705] per cent per annum from August 1, 1916, being the amount awarded by the judgment of the United States District Court at Kansas City, and that judgment also be entered in favor of intervener, E. B. Spiller, in the sum of \$1,235.13, balance unpaid of attorney fees, and that the entire amount of \$31,447.44 be adjudged as prior in lien and superior in equity to the refunding mortgage and the general lien mortgage of the Railroad Company, and that it should be enforced against the property conveyed to the Railway Company and also recommended that similar judgment be entered in favor of the other interveners, E. B. Spiller et al., in the sum of \$3,652.97 with interest likewise at six per cent from August 1, 1916, and also \$365.29 as attorney fees.

The trial court did not sustain the conclusions of law of the Master, and held that interveners were barred by laches from presenting their claims, and were especially barred because they did not file them in accordance with the terms of the interlocutory orders and the final decree, and held also that, were they not barred by laches and estopped by the failure to file their claims, they could not recover as preferential claimants under the doctrine that the Railroad Company had become a trustee ex maleficio for their benefit, because such remedy was inconsistent with and abrogated by the Act to Regulate Commerce and the exclusive remedies therein prescribed; further that they were estopped from maintaining an action on the theory that a trust ex maleficio had been created, as they had resorted to an inconsistent remedy, i. e., reparation under the Act to Regulate Commerce. The court also found that interveners were not entitled to preference on the current expense and wage theory commonly known as the six months' rule. The conclusion of the learned trial court is concisely stated at the close of the opinion in *North American Co. v. St. Louis & S. F. R. Co.*, 288 Fed. 612, 633, as follows: "For the reasons which have now been stated the court finds itself unable to resist the conclusion that, if the prosecution of the proceedings commenced by the intervening petitions herein had not been barred by laches, the claims of the interveners to liens upon or interests in the property or the proceeds of the property of the mortgagor company prior in lien or right or superior in equity to the prior recorded

liens of the mortgages foreclosed could not be sustained." The intervening and supplemental intervening petitions were dismissed.

[fol. 706] This is a brief resume of transactions covering a long period of time during which interveners have tried to collect moneys which they claim were wrongfully taken from them by excessive, unjust and unreasonable freight rates. Other facts will be referred to subsequently.

Appellees suggest that the assignments of error are too general to direct the court's attention to the questions involved. We are satisfied the controlling questions are sufficiently before us in the assignments of error, and consider the case from that viewpoint.

Were interveners estopped by laches from asserting their alleged rights? The trial court was of the opinion they were, and on this subject said: "if such a suit or application is brought after the time fixed by the analogous statute of limitations at law, the burden is upon the complainant or petitioner to plead and prove unusual conditions or extraordinary circumstances, which make it inequitable to apply the settled rule and stay the proceedings, notwithstanding the fact that the analogous limitation expired before this suit or application was brought. This case falls in the latter class. The times of the statutory limitations of the analogous actions at law had all expired long before the petitioners presented their applications for intervention, and their petitions ought to be dismissed under the settled rule, unless by pleading and proof they have established preponderant equitable reasons why they should be exempted from its operation." *North American Co. v. St. Louis & S. F. R. Co.*, 288 Fed. 612, 621-622.

Laches is an equitable doctrine not controlled by or dependent upon statutes of limitation, although courts quite generally consider the time fixed by such statutes in actions at law of like character as having some bearing on the pertinency of the doctrine of laches, or perhaps more accurately stated, on the burden of proof with respect thereto.

The applicability of the doctrine of laches is dependent upon the circumstances of each particular case. *Gallihier v. Cadwell*, 145 U. S. 368; *Abraham v. Ordway*, 158 U. S. 416; *Jackson v. Jackson et al.*, 175 Fed. 710; *Buchler v. Black et al.*, 226 Fed. 703; *Taylor v. Salt Creek Consol. Oil Co. et al.*, 285 Fed. 532.

[fol. 707] Mere lapse of time does not constitute laches. In addition it must appear that something has occurred that would make it inequitable to grant the relief prayed for. *Schwartz v. Loftus et al.*, 216 Fed. 320; *Minnesota Mut. Inv. Co. v. McGirr et al.*, 263 Fed. 847, 855; *Meyer et al. v. Ritter*, 268 Fed. 937; *Northern Pacific Ry. Co. v. Boyd*, 228 U. S. 482; *Southern Pac. Co. v. Bogert*, 250 U. S. 483.

Laches cannot exist as to a party unless he has legal knowledge of the facts affecting his rights. *Galliher v. Cadwell*, 145 U. S. 368.

The doctrine of laches is to assist and not to defeat justice—it is to be determined by considerations of justice. *Ide v. Trorlicht, Duncker & Renard Carpet Co.*, 115 Fed. 137, 148; *Drees v. Waldron*, 212 Fed. 93; *Mathieson v. Craven*, 247 Fed. 223, 226; *Townsend v. Vanderwerker*, 160 U. S. 171, 186.

It is sound doctrine that if a party interposing defenses of laches has been responsible for and substantially contributes to the delay he is precluded from taking advantage thereof. 5 *Pomeroy's Eq. Jurisprudence*, Sec. 35; *Northern Pac. Ry. Co. et al. v. Boyd*, 177 Fed. 804; *Taylor v. Salt Creek Consol. Oil Co. et al.*, 285 Fed. 532. In *Northern Pac. Ry. Co. et al. v. Boyd*, *supra*, the court said: "It is impossible to escape the conviction that the delay was not prejudicial to the appellant but was to its advantage, and that it was largely caused by its own acts. \* \* \* Where the party interposing a defense of laches has contributed to or caused the delay, he cannot take advantage of it."

Measured by these principles does the history of this litigation justify barring consideration of interveners' claims on the general ground of laches?

In 1904 the rates that had been established by the carriers, including the Railroad Company, for shipments of cattle from Texas, were challenged before the Interstate Commerce Commission. In 1905 the Commission found the challenge was warranted and that the rates were excessive to the extent of three cents per hundred weight. The Commission was impotent to afford relief until the passage of the Hepburn Act in 1906. After that interveners again brought this matter before the Commission in 1906 and [fol. 708] 1908, when the decisions of 1905 as to these rates was reaffirmed. Reparation was ordered in 1914 and de-

mand made on the Railroad Company for payment thereof. Certainly up to that time interveners were guilty of no laches; neither were they in waiting after the award the six months' time the Commission had given the Railroads within which to pay the same before taking further action. They might have expected the reparation allowed would be paid, but it was not. They then proceeded as provided in Section 16 of the Commerce Act (Section 8584 Comp. Stat. 1916) and promptly brought suits in the United States District Court at Kansas City to enforce the orders of the Commission. The record shows no unnecessary delay on their part during the progress of said suits. Judgments were rendered therein August 16, 1916. The affairs of the Railroad Company were then in the hands of Receivers. The final decree in the receivership case had been entered before interveners' judgments were secured. The judgments were not paid, but the case was appealed August 28, 1916. Surely interveners were not then delaying the adjustment of matters. While the judgment was in process of appeal the final sale of the Railroad Company's properties was made and confirmed. Intervenors had no actual notice of the interlocutory orders or of the final decree. Their counsel knew that the receivership matters were pending and, of course, could have known of the orders by a search of the records. Intervenors on August 29, 1916, in open court, prior to the confirmation of the sale, notified all parties concerned who were there represented, of their claims. They also served written notice on the same date on Henry W. Taft, attorney for the reorganization committee and the Railway Company; also on the Railroad Company and the Receivers, of their claims and that they were of superior equity. Said notice concluded as follows: "Therefore, these plaintiffs, as shown in said judgments, claim that the purchaser of said property takes it subject to all the rights of said plaintiffs, and that their said rights for full payment thereof is a lawful charge against the said St. Louis & San Francisco Railway Company aforesaid purchaser of the property and assets of the said St. Louis & San Francisco Railroad Company, if the sale be confirmed. That as to said plaintiffs the sale of said property to the St. Louis & San Francisco Railway Company is fraudulent and void, and said plaintiffs, in whose behalf said judgments have

been rendered, are entitled to have the property so sold and assets acquired or to be acquired by the purchaser, either [fol. 709] the purchasing committee or the St. Louis & San Francisco Railway Company, if it shall be the purchaser, applied to the payment of said plaintiffs' debt by virtue of their rights as judgment creditors."

In the Circuit Court of Appeals the judgment of the District Court was reversed and the claims of interveners were apparently wiped out by the holding of this court. Interveners then took the matter to the Supreme Court of the United States by writ of certiorari, and in May, 1920, the Supreme Court reversed this court and affirmed the judgment of the District Court of the United States entered at Kansas City. The mandate of the Supreme Court was filed July 2, 1920. Interveners then filed petitions for attorney fees in the District Court at Kansas City, which were allowed. Through all these years the attorneys for the Railroad Company, the Receivers and the Railway Company fought these demands of interveners. The Railway Company through its attorneys conducted the contest in the Supreme Court of the United States. It would seem that the interveners were about as persistently and consistently diligent as litigants could be. Certainly in this general situation there is little to sustain the charge of laches by reason of delay.

In addition to delay it is urged that they were guilty of laches in failing to file their demands pursuant to the interlocutory orders entered in the receivership and the final decree, and therefor are now estopped to assert their claims. It is conceded in the record that interveners had no actual notice or knowledge of the interlocutory decrees, or of the final decree until August 29, 1916. The trial court held they had constructive notice. It is the usual and established practice of the courts to require publication of such orders with respect to the time to present claims in receivership matters. It appears in this record that while nearly all of the interveners and their assignors lived in Texas and Oklahoma the notices were not published in any papers in those states. It is perfectly apparent that the attorneys of the Railroad Company and of the Receivers and all parties interested knew before the final decree in March, 1916, and confirma-

tion of the sale in August, 1916, that interveners in their suits at Kansas City were seeking to recover the amounts allowed by the Commission and that "the ultimate purpose of the litigation was to obtain satisfaction of the appellee's [fol. 710] claim out of the property of the Railroad Company or of the Railway Company." *Northern Pac. Ry. Co. v. Boyd*, 177 Fed. 804, 824. The failure to file claims in the receivership case under the circumstances disclosed in this record was not inexcusable neglect. Courts have permitted the filing of claims after the time fixed in interlocutory orders where justified by equitable circumstances. In the *Boyd* case, *supra*, *Boyd* filed no claims in the receivership case, and it was held he was not guilty of inexcusable delay.

The trial court in its opinion referring to interveners and the notice in open court of August 29, 1916, said: "if they had then filed a dependent bill, or, as was done in the *Boyd* Case, an original bill (*Northern Pacific Ry. v. Boyd*, 228 U. S. 482, 492, 33 Sup. Ct. 554, 57 L. Ed. 931), or if they had then procured an insertion in the final decree of such an exemption of themselves and their claims from the estoppels thereof as the Guardian Trust Company secured in *Central Improvement Co. v. Cambria Steel Co.*, 201 Fed. 811, 815, 120 C. C. A. 121, and *Kansas City Southern Railway Co. v. Guardian Trust Co.*, 240 U. S. 166, 174, 36 Sup. Ct. 334, 60 L. Ed. 579, they might possibly have escaped those estoppels and the fatal consequences of their laches." *North American Co. v. St. Louis & S. F. R. Co.*, 288 Fed. 612, 623-624.

While it might have been the better practice to have proceeded by an original bill, yet we think that in view of the litigation then pending, which the Railroad Company and the Receivers were appealing to this court, and the unusual circumstances existing with relation to this entire matter, interveners' rights ought not to be barred by laches because they did not file an original bill or attempt to have themselves exempted from the operation of the final decree. The notice given of their claims would not be sufficient to destroy an estoppel that had been established by laches, but it is an important element in view of all the circumstances in this case bearing on the question of whether or not that situation had arisen.

Through all these proceedings the Railroad Company, the Receivers and the Railway Company, who now insist that interveners should have filed their claims, were contending that interveners had no valid claims. They presented that idea so forcibly to this court that it decided interveners could not collect their demands. Were interveners compelled to abandon their efforts in the courts of [fol. 711] the United States to fully establish their claims in the manner provided by the Act to Regulate Commerce, and file them in the receivership proceedings, or be guilty of such laches as to preclude recovery if they eventually should be held to be valid claims? We think not.

Who was hurt by the delay? If the theory of interveners is correct that the money taken in freight rates, repayment of which they were demanding, was wrongfully taken from them by duress, and that the Railroad Company became a trustee ex maleficio thereof, then the bondholders or mortgages of the Railroad Company had no right to it. Certainly the original stockholders of the Railroad Company had no such right. They were not injured by the delay. None of the parties were entitled to have the value of their properties enhanced by the wrongful appropriation of others' moneys.

If the circumstances of this case are not so unusual and extraordinary as to excuse the claimed laches it would be difficult to conceive of a situation sufficient to accomplish that result. Through all these years interveners against the constant opposition of the Railroad Company the Receivers and the Railway Company were attempting to collect the money wrongfully taken from them in unjust and excessive freight rates. If there has been unnecessary delay in presenting the claims for final action appellees have contributed thereto. To now say that appellants are barred by laches from insisting upon their rights would, it seems to us, make that doctrine an instrumentality to defeat rather than promote justice.

It is claimed interveners were bound by the interlocutory and final orders in the receivership proceedings and estopped from disregarding or assailing the validity of the decrees or the sale. The trial court so held, and such is the doctrine of the authorities. Under the holdings of this court interveners were in the same situation, bound by the

same orders and decrees, and subject to the same estoppels as if they had been parties to the suit when the same were made. *Swift v. Black Panther Oil & Gas Co.*, 244 Fed. 20; *Commercial Electrical Supply Co. v. Curtis et al.*, 288 Fed. 657. To the writer there seems an apparent element of injustice in permitting a party to intervene and present his claim, take his evidence, go to the expense of a trial, and then say to him, "at the time you intervened your right were barred by a final decree entered long prior to the time the court gave you the right to intervene." Such intervention becomes a useless procedure. Possibly the answer is, if parties do not desire to be so barred they should not intervene, but should bring an original bill.

It is urged by interveners that if they are bound by the orders and decrees entered before their intervention then they are entitled to any rights they might have if their petition of intervention had been actually on file at the time of the interlocutory and final decrees, and that if such be the situation they had claims remaining untried at the time of the entry of the final decree, and therefore the interlocutory decree and the final decree constitute no bar as to them; further, that if they were actually to be considered in the case prior to intervention they were entitled under the doctrine of *Northern Pacific Railway Company v. Boyd*, 228 U. S. 483, to a fair offer under the reorganization plan of stock or cash for their claims the same as other creditors, and that as no such offer was ever made the decree is void as to them. In the view we take of the matter there is no necessity of considering these somewhat interesting questions.

We are satisfied that while interveners are not estopped from prosecuting their demands by the general doctrine of laches, they are under the decisions of this court bound by the terms of the final decree. They have proceeded on the theory of presenting their demands under the terms of that decree and in the intervening petitions assert their rights "pursuant to the final decree." We consider therefore the terms of that decree. It provides (Article 9) that the purchasers of the property shall take the same subject to "(B) Any unpaid claims of creditors of the defendant Railroad Company which have been or shall be admitted by

the parties in interest or adjudged by this Court to be prior in lien or superior in equity to the Refunding Mortgage or to the General Lien Mortgage." Article 10 thereof provides for the receivers filing statements showing:

"(b) All unpaid indebtedness and liabilities contracted or incurred by the defendant Railroad Company prior to the appointment of the Receivers in the operation of the property directed by this decree to be sold, and which so far as they are informed are claimed to be prior in lien or superior in equity to the Refunding Mortgage;

\* \* \* \* \*

"(e) All claims and demands against the defendant Railroad Company which have been filed in this cause pursuant to the orders heretofore entered herein, save such [fol. 713] as may have been paid and discharged in full.

\* \* \* \* \*

"Notice having been given for the presentation in this cause of claims and demands against the defendant Railroad Company of every character and description whatever, and the time for the presentation of said claims having expired, no such claim or demand which has not been presented in this cause in accordance with the orders heretofore made requiring presentation thereof other than

\* \* \* \* \*

(2) any claim or demand which may arise after the entry of this decree,

shall be enforceable against the Receivers or against the property sold, or any part or portion thereof, or against any purchaser of the same or any part thereof, his successors or assigns."

The Receivers did not list the demands of interveners under subdivision (b) Article 10.

Does the provision of the final decree, "any claim or demand which may arise after the entry of this decree," cover the claims of interveners? The final decree endeavored to take care of certain contingencies. It was expected apparently that there were matters including cer-

tain claims and demands that would arise thereafter requiring action, and that some would be claimed to be prior in lien or superior in equity to the mortgage. If these arose after the final decree then they were not to be cut off by failure to file them in the receivership matter within the time provided in the notices.

While the demands of interveners had not been brought officially to the attention of the trial court until August, 1916, the attorneys of the Railroad Company and the Receivers knew all about them prior thereto, for they were energetically contesting them in the courts. It would be quite natural that, knowing of these demands of the interveners being fought through the courts and that the effort would of course be made to collect out of the property if they were eventually successful, they would arrange some provision in the decree to provide for just such demands if they ripened into established claims. The Master interpreted the final decree to cover demands such as interveners presented, holding that the word "arise" was not used in the sense of "accrue;" that a claim could not accrue against the Railroad Company after the entry of the final decree, for the Railroad Company stopped functioning when the Receivers were appointed, but that a claim could "arise" for the consideration and determination of the court after the entry of the final decree, and held these were such claims.

The trial court's conclusion was the reverse of this. We quote therefrom (*North American Co. v. St. Louis & S. F. R. Co.*, 288 Fed. 612, 625) as follows: "The view of the special master was that the word 'arise' in the exception, 'other than any claim that may arise after the entry of this decree,' did not mean 'accrue,' and that, while the claims of the interveners did not accrue after the entry of the decree, they arose thereafter, and hence were excepted from what seems to the court to be the plain and comprehensive bar of all claims not presented as required by the interlocutory decree contained in that decree and in the final decree. But after thoughtful consideration the court is unable to adopt this view, or to resist the conclusion that the meaning of the word 'arise' in the connection in which it is here used was identical with the meaning of the word 'accrue'—that none of the claims of the interveners either

arose or accrued after the entry of the decree, and that they all fall under the ban of both decrees."

The question therefore of the construction of this phrase of the final decree is of determinative importance. In arriving at the meaning of words courts must take into consideration their conjunction with other words, and the purpose of their use. The words "arise" and "arising" are of frequent occurrence in the law, such as causes "arising under the Constitution and the law;" "unforeseen contingencies which may arise;" offenses "arising in the naval forces;" "causes of action arising." In *United States v. Heth*, 3 Cranch 398, 413, the Supreme Court said, "The word 'arising' refers to the present time, or time to come, but cannot, with any propriety, relate to time past, and embrace former transactions." In *Van Meter v. Coal Mining Co.*, 88 Iowa 92, 98, where the court was dealing with the phrase "unfor-seen contingencies which may arise," it considered the matter as "arisen" when it had "come into notice," or "become visible," and held that to the meaning of the word "arise." In *Doughty v. Funk* (Okl.), [fol. 715] 84 Pac. 484, the court construed the word "arise" to mean something more than is meant by the term "accrues" as used in a particular section of the Oklahoma statute. In *Macon Grocery Co. v. Atlantic Coast Line R. R. Co.*, 215 U. S. 501, the court refers to a number of cases in the Supreme Court which discuss the question of when a case may be said to "arise" under the Constitution of the United States. In 3 Fed. Cases, No. 1596, discussing the question of when an offense "arises" in the land or naval forces within the meaning of the Fifth Amendment to the Constitution, the court says: "Among the ordinary and most common definitions of the word 'arise' are 'to proceed, to issue, to spring,'" *Cyclopedia of Law and Procedure*, Vol. 3, page 811, gives the same definition.

In *Moran v. Moran*, 144 Iowa 451, the Supreme Court of Iowa pointed out the difference between the words "accrue" and "arise" as used in a statute of limitations. In *Love et al. v. North American Co. et al.*, 229 Fed. 103, 106, this court said, "The claims of the shippers arose at the time the Supreme Court of Oklahoma decided the appeals." The Supreme Court of the United States in *Southern Pacific Co. et al. v. Darnell*, 245 U. S. 531 and *Louisville Ce-*

ment Co. v. Int. Com. Comm., 246 U. S. 638, discusses the question of when a claim or right of action accrues. The word "arise" in the decree is not used, we think, as synonymous with "accrue" or in the sense of originating. It is used in the sense of the usual definition of the verb "arise," that is, to appear, to become, to present itself. It is evident the Receivers did not regard the claims of interveners as having arisen when the final decree was filed. They were required to file within a certain period of time a statement of unpaid indebtedness and liabilities of the Railroad Company incurred prior to their appointment, "and which so far as they are informed are claimed to be prior in lien or superior in equity to the Refunding Mortgage." They filed such list but did not include any claims of interveners, although they must have known from the pending litigation all about them, doubtless assuming as they were denying such claims and fighting their establishment in the courts that so far as they were concerned they were not claims that had as yet arisen for consideration of the court having the receivership in charge.

It might be suggested also that while the right of action here accrued in 1914 when the Commission made an order of reparation, the claims were not finally established until [fol.716] the decision of the Supreme Court of the United States. They had not appeared in the transactions being carried on in the receivership proceedings. Had the Supreme Court sustained the decision of this court they never would have appeared. Interveners proceeded on the theory that they had the right under the final decree to present their claims as finally established by the Supreme Court of the United States. They were claims different from and unlike the ordinary creditors' claims. They must be *prima facie* established by the Commission's findings, and completely established by the judgment of a court. In any event we are satisfied that the word "arise" referred to claims or demands which had not been in the proceedings in the court up to the time the final decree was entered. The claims of interveners therefore did not "arise" in the receivership proceeding as the term is used in the final decree until the petitions of intervention were filed pursuant to the court's permission and order, thus bringing the matters before the court for its consideration.

If the final decree and order of confirmation constitute a contract between the court and the purchaser it is not breached, as under Article 9 of the decree the purchaser takes the property upon express condition that it will satisfy and discharge "(B) Any unpaid claims of creditors of the defendant Railroad Company which have been or shall be admitted by the parties in interest or adjudged by this Court to be prior in lien or superior in equity to the Refunding Mortgage or to the General Lien Mortgage;" and under section (e), subdivision 2 of Article 10 these claims or demands of interveners are not barred from consideration, because they "arise after entry of this decree." The Railway Company took the property therefore subject to the claims of interveners should they be allowed by the court as prior in lien or superior in equity to the mortgages. They expressly so agreed in accepting the property under the final decree.

Interveners contend their claims set forth in the petitions of intervention are entitled to preferential allowance with priority over claims of other creditors, including bondholders, on three distinct grounds, viz.,

(1) That they represent the excess freight charges unlawfully exacted from them or their assignors by duress, [fol. 717] and that therefore the defendant Railroad Company became a trustee thereof *ex maleficio* for their benefit.

(2) That they come within the rule under which claims for labor, supplies and like necessities for the operation of a railroad are held to be preferential.

(3) That a sound public policy requires they be allowed as preferential claims.

In view of our conclusion as to the first proposition we find it unnecessary to discuss the other two.

It is contended by appellees that the rates charged were the rates provided in the tariffs of the Railroad Company established, filed and published in conformity with the Interstate Commerce Act, and were the only rates which the Railroad Company could collect without a violation of the Act,—hence there was nothing of wrong in their collection.

Section 1, subdivision 3 of the Act to Regulate Commerce (U. S. Comp. Stat. 1916 Sec. 8563) provides, "All charges

made for any service rendered or to be rendered in the transportation of passengers or property \* \* \* shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful." Section 6 of the Act (U. S. Comp. Stat. 1916, Section 8569) in force when the disputed rates were collected, provides for the filing and posting by the Railroad Company of schedules of rates for transportation of property, and prohibits charging a greater or different rate than that provided in these tariffs. The Courts have held that even if the rates were unreasonable the shipper was bound to pay the same and could later apply to the Commission for reparation. *Penna. R. R. Co. v. International Coal Co.*, 230 U. S. 184; *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426. It was held by the Commission in 1905 that the rates complained of and involved here were unreasonable and unjust. The Railroad Company did not change its rates and it is now insisted that, having refused to comply with the order of the Commission and having refused to change its tariffs, it was protected and justified in exacting the amounts which the Commission has held to be unreasonable because it had published them as its tariff rates. It could not, it is true, collect otherwise than according to its published tariff rates, but it could have changed its tariffs in the manner provided by the Act to [fol. 718] comply with Section 1 thereof and the order of the Commission. The fact that the Railroad Company continued to maintain its tariffs the same as before said finding is not a defense to it for collecting unreasonable and unjust rates. The charging of an excessive and unreasonable rate is ipso facto unlawful. *Darnell-Taenzar Lumber Co. v. Southern Pac. Co.*, 221 Fed. 890. A carrier cannot make such rates lawful by continuing to publish them under Section 6 of the Interstate Commerce Act. After some fifteen years of litigation it was settled that the Railroad Company had exacted unreasonable and unjust freight rates to the extent of three cents per hundred weight on the shipments involved.

While ordinarily a trusteeship ex maleficio of money or property arises out of a fraud or deceit there is no reason why it may not arise out of duress or in any other "unconscientious manner." 3 Pomeroy's Equity Jurisprudence Sec. 1053, states the rule as follows: "In general, when-

ever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means or under any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest equity impresses a constructive trust on the property thus acquired in favor of one who is truly and equitably entitled to the same."

In *Angle v. Chicago, St. Paul & C. Railway*, 151 U. S. 1, 26, the Supreme Court of the United States said, "It is familiar doctrine that a party who acquires title to property wrongfully may be adjudged a trustee ex maleficio in respect to that property." See also 1 *Perry on Trusts*, Sec. 166; 26 R. C. L. Sections 82 and 83, page 1236; *Mercantile Trust Co. v. St. Louis & S. F. Ry. Co.*, 69 Fed. 193; *Richardson v. New Orleans Debenture Redemption Co.*, 102 Fed. 780; *Central Stock & Grain Exchange v. Bendinger*, 109 Fed. 926; *Ahrens v. Jones*, (N. Y.) 62 N. E. 666; *Lamb v. Rooney et al.* (Neb.) 100 N. W. 410; *Ryan and another v. Dox*, 34 N. Y. 307; *In re Wise's Estate* (Pa.) 41 Atl. 526; 1 *Pomeroy's Eq. Jur.* 155.

A railroad company and a shipper do not stand on equal footing. A shipper is compelled to pay the rate provided in the tariff. His life as a shipper is terminated if he is [fol. 719] deprived of transportation to the market place, and if he pays an excessive and unjust rate provided by the tariff he is certainly acting under duress, and to the extent of the rates above a reasonable rate the Railroad Company should be held as a trustee ex maleficio for the shipper, the legal title to the exaction being in the Railroad Company, the beneficial title remaining in the shipper. The case of *Love v. North American Co.*, 229 Fed. 103, would seem to be authority for this position. There excessive charges received by this same Railroad Company were held to belong to the shippers. This court there said, page 106:

"The question now might be properly asked, to whom do the excessive charges received by the Frisco Company for the transportation of freight belong? They certainly do not belong to the general creditors of the Frisco Com-

pany, nor to the bondholders, nor the Frisco Company, itself. Without question they belong to the shippers. We must not be deceived as to the true status of this claim, nor allow the bond, or the fact that the claim is presented by the Corporation Commission, to blind us to the fact that the claim is one due to the shippers for excessive charges paid by them to the Frisco Company for transportation of freight. The shippers not only paid the lawful charge, but they did more. They paid an excessive charge. That payment was an illegal exaction, and, as against the railroad company, and volunteers, like the receivers, the money belonged to the shippers after the payment the same as before. It will be presumed that it was a part of the money in the treasury of the company which passed to the receivers. That money came into the hands of a court of equity. What ought such a court to have done with it? Surely it could do nothing but direct that it be returned to the shippers to whom it belonged. It having been paid to the bondholders, or for permanent betterment of the property for their benefit through the agency of a court of equity, that court, as a court of conscience, can do no less than direct its restoration."

In *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S. 531, 534, the Supreme Court said: "The carrier ought not to be allowed to retain his illegal profit."

Appellees strongly urge in their brief that the trust fund theory cannot apply to make these claims preferential and give priority, because the moneys received for the freight charges were used by the Company the same as other [fol. 720] moneys, and that neither the Railroad Company nor the Receivers retained the same in a separate fund; that they were co-mingled with other moneys of the Railroad Company in the various banks and may have gone into an account which was wholly wiped out; that the proceeds cannot be allowed into the hands of the Receivers and the lien claimed thereon, but that the most interveners could claim would be to come in as general creditors. Of course, it is true that these moneys wrongfully exacted in freight rates were co-mingled with other funds, and cannot be traced in any separate and distinct fund into the hands of the Receivers. They were not in any way earmarked. If that is essential to create a trusteeship *ex maleficio* and give

to interveners the status of preferred creditors then they must fail. While it has been held by the courts that in order for a cestui que trust to claim the right to preferential payment by a Receiver out of proceeds of the estate of an insolvent "that clear proof be made that the trust property or its proceeds went into a specific fund or into a specific identified piece of property which came to the hands of the receivers," *Empire State Surety Co. v. Carroll County et al.*, 194 Fed. 593, 604, *Weideman v. Newton Arms Co.*, 271 Fed. 302, yet the case of *Love et al. v. North American Co. et al.* 229 Fed. 103, is the latest expression of this court on the subject and is authority for the proposition that in order to establish a trust in a railroad company for the benefit of the shipper as to freight charges wrongfully exacted, it is not necessary to show that the identical money received has been placed in a separate account, or to trace the identical fund. It is established by the record here that at all times after the excessive freight charges were collected and down to the receivership the Railroad Company had in its treasury money in excess of the claimed overcharges, and that it turned over to the Receiver some \$300,000.00. Under the doctrine of the Love case it will be presumed that the money exacted by duress from the interveners and their assignors for unjust and excessive freight rates was a part of the money in the treasury of the company which passed to the Receivers. Efforts are made in argument to distinguish the Love case from this, but on the question we are now considering there is no substantial difference.

It is insisted that the action to charge the Railroad Company as a trustee ex maleficio cannot be maintained because the same is not consistent with the Act to Regulate Commerce, and that such Act prescribes an exclusive remedy by reparation. The Act does provide for reparation. It also provides, Section 22 that, "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

In *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 446, the Supreme Court referring to Section 22 said: "This clause, however, cannot in reason be construed as continuing in shippers a common law right, the continued

existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot be held to destroy itself." This decision settles the proposition that common law remedies inconsistent with provisions of the act cannot be resorted to, but if these common law remedies are not inconsistent with the act they are not abrogated. Section 22 is not inconsistent with the provision providing for a suit for damages. The equitable remedy to impress a trust on money wrongfully and unlawfully taken from a shipper is not destroyed by the procedure to secure a judgment for repayment of the same. It is postponed, of course, until after action by the Commission and possibly by the courts. If interveners had gone into the receivership proceedings and attempted to enforce the trust without having their right to reparation first established by the Commission the court would undoubtedly have required them to proceed first before the commission. They endeavored to secure the establishment of their claims as judgments before attempting to impress a trust upon the fund. We see no inconsistency in this. The equitable remedy merely assists in bringing about justice by the impression of a trust and makes possible a realization upon the judgments. It is in aid of the judgments. We see no reason why an action at law for money had and received bars an equitable right to enforce a trust *ex maleficio* after said judgment is secured, in aid thereof. Interveners had only the one remedy at the time they proceeded before the Interstate Commerce Commission, and that remedy had to be pursued to a conclusion before any other became available. Consequently there is no doctrine applicable to that situation of election of remedies. 20 C. J., p. 21. Further, as said in 39 Cyc. p. 591, "As a general rule the jurisdiction of equity in establishing and enforcing trusts is in addition to and concurrent with any remedies at law the party [fol. 722] may have." See also 6 L. R. A. (N. S.) 793; *Fitzgerrell v. Federal Trust Co. (Mo.)*, 187 S. W. 600; *Krippendorf v. Hyde & Another*, 110 U. S. 276.

It is also argued that under Section 16 of the Act to Regulate Commerce interveners can have no other status than general unsecured creditors with no rights of priority, because the Act provides for collecting "damages". While the statute refers to the right to collect damages, the dam-

ages in this case are the amounts of money wrongfully taken. There is no particular sanctity surrounding the term "damages". As pointed out in the Master's conclusions of law, if money is taken from a party by duress he is damaged; if it is taken from him by a highwayman at the point of a revolver he is damaged; if it is taken from him by deceit and fraud he is damaged and he may sue for tort, or he may sue to impress a trust. In *Mills v. Lehigh Valley R. R. Co.*, 238 U. S., 473, 481-482, the Court said:

"What the Commission decided was that the shippers were entitled to reparation, that is, to be made whole, to be compensated for a loss because of an illegal and unreasonable exaction, and the amount which they stated as the sum to be paid 'as reparation' on the specified shipments was the amount which they found necessary to accomplish the reparation,—to afford the compensation. The statute was not concerned with mere forms of expression and in view of the decision that a finding of the ultimate fact of the amount of damage is enough to give the order of the Commission effect as *prima facie* evidence, we think that the trial court did not err in its ruling. The statutory provision merely established a rule of evidence. It leaves every opportunity to the defendant to contest the claim. But when the Commission has found that there was damage to a specified extent, *prima facie* the damage is shown." It may be observed that the judgments in the cases in the United States District Court at Kansas City were not for damages in the usual and technical sense of that term. We quote from the entry in the *E. B. Spiller* case: "It is further ordered, adjudged and decreed by the Court that Plaintiff *E. B. Spiller* do have and recover of and from the defendant, *St. Louis & San Francisco Railroad Company* the sum of Twenty-seven Thousand Six Hundred Eighty-two and 75/100 Dollars (\$27,682.75) being the amount of principal and interest ordered by the Interstate Commerce Commission to be paid to the plaintiff *E. B. Spiller* by the [fol. 723] said *St. Louis & San Francisco Railroad Company* on or before June 15, 1914, and do have and recover of and from said defendant the further sum of Two Thousand Five Hundred Twenty-nine and 56/100 Dollars (\$2,529.56) being the interest at six per cent per annum on said sum of \$27,682.75 from June 15, 1914 to Aug. 1, 1916,

being a total sum of Thirty Thousand Two Hundred Twelve and 31/100 Dollars (\$30,212.31) together with interest thereon from August 1, 1916 at six per cent per annum until paid." However, interveners were damaged to the extent of the money wrongfully taken from them. No other damage was claimed. It makes little difference what technical words may be used to describe what may be recovered, the judgment was for moneys paid by interveners and their assignors above reasonable and just rates for the transportation of property. *Spiller v. Atchison, T. & S. F. Ry. Co.*, 253 U. S. 117.

It is true that interveners never attempted to enforce the trust until the intervening petitions were filed on December 2, 1920. It may be that there are other methods of procedure which might better have been followed, but we are not convinced that interveners were estopped to assert the trust theory after final judgment by reason of not having before asserted it, especially in view of all the circumstances surrounding these transactions and the fact that full notice was given to the Railway Company before the foreclosure sale was confirmed of interveners' claims of priority by reason of the wrongful collection of the excessive rates.

We do not think the interveners are entitled to recover upon the theory of the rule underlying the right to preferential claims of labor, supplies, etc., and agree with the decision of the trial court as to that question; nor is it necessary to consider the question of public policy urged; nor in view of our conclusion as to a trusteeship *ex maleficio* is it necessary to consider the effect of the doctrine announced in *Northern Pacific Ry. v. Boyd*, 228 U. S. 482, as to the right of a creditor, who has received no fair offer in the reorganization plan of cash or participation, to subject the interest of the old stockholders in the property to the payment of his claims. It may be suggested that the interveners received no offer of any kind and that the stockholders of the Railroad Company have been given an interest in the reorganized Railway Company to the extent of more than \$45,000,000.00.

[fol. 724] Under the theory we have adopted as applicable to the facts of these cases the claims for attorney fees cannot be established as preferential claims.

It would seem a reproach to equity if it did not afford a remedy to interveners under the situation presented by this record. Against the constant opposition of the Railroad Company, its Receivers and the Railway Company their claims have been established in the District Court and the Supreme Court of the United States. Other creditors, bondholders, mortgagees, stockholders, acquired no interest of any kind in these excessive and unjust charges. Preferential allowance of the claims arising therefrom takes nothing from them to which they are entitled. The Railway Company received the property of the Railroad Company subject to these claims if allowed by the court, as we have before pointed out, and hence suffers no wrong. Every consideration of equity and fair dealing demands that these claims should not be lost in a labyrinth of technicalities.

We hold that appellants were not guilty of inexcusable laches and that it was error to dismiss their petitions upon that ground; that they are not precluded by the final decree and order of the confirmation of sale from asserting the claims set forth in the petitions of intervention; that the Railroad Company in collecting the overcharges became a trustee *ex maleficio* of interveners' funds, and that the Railway Company accepted said properties subject to these claims should they be allowed by the court; that intervener, E. B. Spiller, is entitled to have the claims set forth in his petition of intervention established in the sum of \$30,212.31 (not including any attorney fees) with interest from August 1, 1916, and interveners, E. B. Spiller et al., are entitled to have their claims established in the sum of \$3,652.97 (not including attorney fee) with interest at six per cent from August 1, 1916 as preferential claims superior to the rights of other creditors, including the bondholders, and the order and decree of the trial court dismissing the interveners' petitions is reversed and the case is remanded with instructions to enter judgment for the amounts herein set forth, the same to be adjudged as prior in lien and superior in equity to the Refunding Mortgage and General Lien Mortgage of the St. Louis & San Francisco Railroad Company, and directed to be enforced against the property conveyed [fol. 725] to the St. Louis & San Francisco Railway Com-

pany as assignee of the purchasers at the foreclosure sale had in the consolidated receivership case.

Reversed and remanded.

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[fol. 726] IN UNITED STATES CIRCUIT COURT OF APPEALS,  
EIGHTH CIRCUIT

[Title omitted]

DECREE—June 24, 1926

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the order and decree of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that E. B. Spiller and E. B. Spiller, et al., have and recover against the St. Louis and San Francisco Railroad Company, and St. Louis-San Francisco Railway Company, the sum of — Dollars for their costs in this behalf expended and have execution therefor.

It is further ordered that this cause, be, and the same is hereby, remanded to the said District Court with instructions to set aside the order and decree dismissing the interveners' petitions and to enter a decree in favor of intervenor E. B. Spiller for Thirty Thousand Two Hundred Twelve and 31/100 (\$30,212.31) Dollars, with interest at six per cent from August 1, 1916, and in favor of interveners E. B. Spiller, et al., for Three Thousand Six Hundred [fol. 727] Fifty-two and 97/100 (\$3,652.97) Dollars, with interest at six per cent from August 1, 1916, the same to be adjudged as prior in lien and superior in equity to the Refunding Mortgage and General Lien Mortgage of the St. Louis & San Francisco Railroad Company and directed to be enforced against the property conveyed to the St. Louis & San Francisco Railway Company.

[fol. 728] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 729] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 1, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3645)

